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The Solicitors' Journal

VOL. LXXX. **Saturday, June 27, 1936.** No. 26

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Current Topics.

Law Revision.

THE ill-health which unfortunately led to the resignation of LORD HANWORTH from the Mastership of the Rolls has now been the cause of his retirement also from the chairmanship of the committee charged with the duty of overhauling our legal system, by making such alterations in the substance of the law as would bring it more into harmony with modern ideas and aspirations. To LORD HANWORTH, his successor as Master of the Rolls has just been appointed to follow him as chairman of the committee in question. This is in accordance with the fitness of things, and, moreover, with LORD WRIGHT'S varied experience, first, as a leader for a number of years in the Commercial Court, in which, it will be remembered, the first vigorous effort was made to arrive rapidly, without the intervention of elaborate pleadings, at the root of the matters in dispute; then, as a puisne judge of the King's Bench Division where his profound acquaintance with commercial law made him an ideal judge in the court where he had so long practised; next, as a Lord of Appeal in Ordinary; and now as Master of the Rolls, and as such the acting President of Court of Appeal No. I. With this varied judicial experience, added to a long experience as a busy counsel, he should make an ideal chairman of the committee to which he has now been nominated. During the past few years considerable headway has been made in the matter of reform, but, in the biblical phrase, there is still much land to be possessed; in other words, there is still abundant scope for the work of the reformer, and in the task to which the Master of the Rolls has been called we all wish him every success.

Central Criminal Court: June Session.

THE June Session of the Central Criminal Court opened on Tuesday, 23rd inst. At the beginning of the week there were 100 persons awaiting trial or sentence, this comparatively high figure being, according to a paragraph in *The Times*, accounted for mainly by the long interval since the last session caused by the Whitsuntide vacation. The list included one murder charge, one of attempted murder, three of manslaughter, two of wounding, one of attempting to rob while armed, and two of causing grievous bodily harm. Others relate to using means to procure miscarriage. There are also six charges of bigamy, one of aiding and abetting in the commission of bigamy, four of coining, seven of forgery, one of perjury, three of demanding money with menaces, fourteen of breaking and entering, while four alleged offences against the Post Office also figure in the calendar. The Lord Chief Justice will try the cases in the Judge's List.

The Law of Libel.

A SHORT while ago we alluded to a letter then recently published in *The Times* signed by a number of well-known writers in which the existing law of libel was criticised in light of the opportunities afforded for the prosecution of speculative claims. The subject was recently discussed in private at the Empire Press Union Conference and a suggested Bill was placed before the conference by Mr. KENNETH HENDERSON, the manager of the legal department of Associated Newspapers Limited, with the object of amending the law so as to abolish actions of the character recently described by LORD MAUGHAM as "gold digging operations." The Bill provides that no action for libel shall lie without proof of actual damage unless the words complained of (*a*) impute to any girl or woman unchastity or adultery, or (*b*) charge the plaintiff with having committed a criminal offence which is punishable corporally, or impute that the plaintiff has an obnoxious contagious disease, or (*c*) are published of the plaintiff in relation to his or her office, profession or trade. There is a proviso to the effect that, unless the judge certifies to the contrary, a plaintiff shall not in respect of any action brought under paragraphs (*a*) and (*c*) recover more costs than damages. The object of this proviso will best be indicated by a quotation of Mr. HENDERSON'S own words as reported in *The Times*. The latitude allowed to juries, he said, in assessing damages had resulted in persons regarding libel actions as a pleasant form of speculation in which the potential profit was large and the amount which needed to be invested was very small. Any person whose name was mentioned in any newspaper was at once invited to consider whether some slip had not been made which might entitle him to recover damages, or, at any rate, make a claim which a newspaper would, on the grounds of the potential expense involved, be glad to settle. Even if the person who was referred to in print did not see the article in question, or if, seeing it, he did not appreciate his good fortune, it was by no means improbable that some persons who stood to profit by promoting litigation might call the matter to his attention and suggest that if he would allow them to conduct the litigation for him he would not be put to any expense. No costs would be charged unless the action succeeded, in which case they would be paid by the defendants.

Money Making by Libel Actions.

On the general position, Mr. Henderson referred to cases which, he said, had arisen, and in recent years had become increasingly frequent, in which a man brought libel proceedings, not for the protection of his reputation, but to make money. Juries whose duty it was to determine the amount of the damages had, he urged, nothing to guide them, while the matters which a jury might properly consider were so vague in nature, and it was so difficult to give them any approximate cash value, that it was almost impossible to succeed in an application to the Court of Appeal. The danger of what were described as excessive awards would not, it was said, be so great were it not that in recent years the class of statements which the law regarded as capable of a defamatory meaning had been very greatly extended, and the opportunities for speculative claims correspondingly increased. That, he continued, was because the courts had held that statements *ex facie* innocent and harmless might yet be defamatory because of some circumstances entirely unknown to the person publishing them. It might be possible for a newspaper to keep its columns clear of statements obviously defamatory, but it could not by any degree of care tell beforehand what innocent statement might become defamatory because of circumstances of which the newspaper was not and could not be aware. This last is an interesting and important point exemplifying one of the difficulties involved in what may be the perfectly innocent and reputable retailing of news. While fully recognising the difficulty we are of opinion that a proposed change in the law which in cases of this nature would shift the test of libel from the injured reputation of the plaintiff and involve an inquiry into the difficulties attendant upon the defendant's activities is to be deprecated.

The Public Trustee Office.

The twenty-eighth general report of the Public Trustee, which is concerned with the twelve months ended 31st March, 1936, shows, with a small decrease in the number of new cases accepted during the year, some increase in the use made by the public of the office. The new cases accepted number 971, compared with 1,003 for the previous twelve months. Of the cases accepted last year, nearly 60 per cent. were under £5,000 in value—a tribute to the fact that the office commands the confidence of those for whom it is particularly suitable. Receipts during the year amounted to £319,997, expenses to £295,922. Corresponding figures for 1934–35 are £316,111 and £288,338. The surplus thus shows a slight decline from £27,773 to £24,075. The total aggregate value of new business, including accretions to existing trusts, exhibit, on the other hand, a slight increase from £14,043,579 to £14,101,076. Other figures, which may be cited from the report, illustrate the volume of business with which the office is or has been concerned. Since its inception in 1908 to 31st March, 1936, the total number of cases accepted amounts to 33,156, of which 14,896 have been completely administered. Thus, 18,950 cases are now under administration, representing £216,244,144, in addition to landed property and settled land estimated at £53,000,000 and cash at bank of approximately £2,500,000. The only loss during last year—one of £10, due to misappropriation of trust funds—was recovered.

Motor Insurance: Evidence before Committee.

The Departmental Committee on Compulsory Insurance, which was appointed to consider whether there is any need for changes in the existing law, sat for the first time on Monday, when a memorandum was submitted by the Board of Trade. This memorandum, which was published with minutes of evidence on the same day (H.M. Stationery Office, 3s. net), indicates that the powers recently granted to the Board have proved adequate to obtain information about the position of certain companies doing motor vehicle insurance business on which the Department had felt some doubt. In these cases there was no ground for the presentation of a winding up petition. The memorandum points out that, while the Department was now in a position to keep a watch on the weaker companies, it could not prevent their insolvency. It should, however, normally be possible to wind up an insolvent company before its career of insolvency had gone too far. The memorandum puts forward for the committee's consideration the question whether these powers, limited as they are, are sufficient for present purposes, or whether more positive requirements should be imposed to secure, as far as possible, that insurers doing compulsory insurance business, should remain solvent so long as they did business and in respect of that business. Questions which the committee might discuss, if it should consider special safeguards desirable are, it is suggested, the licensing of insurers by the Board of Trade, statutory requirements for financial resources, a stringent form of periodical audit, and a fund, out of which unsatisfied third-party claims could be met. A limitation of liability for insurance in motor vehicle business, and, if that is thought expedient, what the limit should be, and whether it is reasonable to expect pedestrians and others to take out their own policies of personal accident insurance to cover an amount in excess of such statutory limit, are other questions which, it is thought, the committee might consider. Mr. E. H. Marker, Comptroller of the Companies Department of the Board of Trade, giving evidence on the memorandum, suggested a limit of £5,000 for compulsory insurance. Beyond that, if a man did not insure, he should, it was suggested, pay the damage himself. An affirmative answer was returned to a question asked by Sir Felix Cassel, chairman of the committee, concerning the possibility of stupendous damages being payable in the event of a cinema star, a boxer, a professional football player, a jockey, or anybody engaged "in these lucrative occupations" being run over. Sir Charles Hipwood, a member of the committee, asked a question concerning companies occupying a position between the big solid companies and five companies which had gone bankrupt. (The memorandum states that all of these five indulged in reckless underwriting and, when they found themselves approaching insolvency, increased their premium income to the utmost possible extent.) Mr. Marker replied to the effect that certain cases had been examined, in regard to which the conclusion had been reached that there was no immediate danger of any insolvency, but there were certain companies that were not as strong as others, and the Board of Trade could not guarantee that there might not be insolvency.

The Road Fund.

The possible effect of the transfer of the income of the Road Fund to the general Exchequer, as provided by cl. 27 of the Finance Bill, upon road policy in the future, was recently discussed in the House of Commons, when the Bill was being considered by the whole House in Committee. Replying to an amendment, subsequently withdrawn, the terms of which need not concern us here, Mr. W. S. Morrison, Financial Secretary to the Treasury, said that the clause did not deal in any way with the policy to be applied to the roads, nor the duties of the Minister of Transport. It merely made a financial change, in that it provided that the revenues of the Road Fund were no longer to be met entirely by the proceeds of certain motor licence duties, but out of moneys provided by Parliament. The clause provides for payment into the fund from time to time out of moneys provided by Parliament of such sums as the Minister of Transport may, with the consent of the Treasury, determine to be required for the purposes of making advances to or in connection with highway authorities under s. 8 of the Development and Road Improvement Funds Act, 1909, and for other purposes of the fund. It was pointed out that Treasury consent is at present necessary for the operation of the fund. "Other purposes" include all purposes

of the fund. No change in policy in regard to roads or to the actual working of the fund under the Minister of Transport was, it was said, involved. Mr. HORE-BELISHA intimated that he could assure local authorities that their five-year road programme would be secure under the new conditions; the Chancellor of the Exchequer had given him an assurance to that effect. The five-year road programme was the best that was presented: its submissions totalled over £100,000,000, and the only restrictions placed upon it would be the will of Parliament. The Minister of Transport claimed that what was happening was that democratic control of the Road Fund was being established. Mr. CHAMBERLAIN indicated that he would accept an amendment to make it additionally clear that the Bill was not repealing existing powers of the Ministry of Transport in some secret way. Whether the proposals in the Bill would reduce the amount of money spent on the roads depended on the circumstances of the time, since the amount to be expended was measured by the product of the tax which depended on the number of vehicles using the roads. The Chancellor of the Exchequer could not say whether larger or smaller sums would have been expended on the roads if the present system were continued, but when the country was embarking on a great expenditure it would, he urged, be monstrous for one department of State to be taken out of the purview of the Treasury and so relieved of liability to have its expenditure cut down. The House subsequently agreed to an amendment, the object of which was to make it clear that sums were required to construct roads and that the Minister of Transport should retain powers to that end.

Poor Relief.

FIGURES contained in the recent return issued by the Ministry of Health show a decrease in the number of persons in receipt of poor relief in England and Wales during the quarter ended March, 1936, when compared with those of the previous quarter and the same quarter last year. The number in receipt of poor relief on 28th March, 1936, was 1,328,432, equivalent to 327 per 10,000 of the population. Corresponding figures for December, 1935, and March, 1935, were 1,348,808 and 1,354,620, respectively, the decreases expressed as percentages being 1·5 and 1·9. Increases recorded during the latter part of the last quarter of 1935 continued until the second week in January. Of the remaining eleven weeks, the figures for nine exhibit a continuous decrease in the numbers in receipt of relief, the two exceptions being explained by severe weather conditions which led to suspension of work in the building trades and other outdoor work.

Stay-in Strikes: A Legal Opinion.

SATURDAY'S *Times* contained the announcement that the Civil Service Clerical Association is taking legal opinion upon the legality of civil servants engaging in a stay-in strike. Five departments are involved: the War Office, the Admiralty, the Home Office, the Air Ministry and the Board of Trade. According to information imparted to a press representative, it would be premature to say such a strike is in contemplation. Before there was any detailed considerations of a stay-in strike, he said, the Civil Service Clerical Association had thought it necessary to find out what was the legal position of civil servants in the matter.

Tithe Bill: Committee Stages Concluded.

BY resorting to the expedient of sitting three times in one day, the Standing Committee of the House of Commons, to which the matter was referred, completed its labours on the Tithe Bill some ten days ago. The last twenty-seven clauses of the Bill and the eight schedules were considered during these sittings and some new clauses were added. The main scheme of the Bill, as submitted to the House on the second reading debate, remains, notwithstanding the large number of amendments—some of which have been noted in these pages—which have been incorporated during its course through the committee stage. The Minister of Agriculture and Fisheries explained to the committee that the magnitude of the administrative task to be undertaken to permit of the extinguishment of all tithe rent-charge on 1st October rendered it necessary to get the Bill passed quickly.

Draft Unemployment Insurance Regulations.

READERS' attention may be drawn to a number of draft regulations recently submitted to the Unemployment Insurance Statutory Committee by the Minister of Labour in accordance with the provisions of s. 104 (2) of the Unemployment Insurance Act, 1935. Copies are obtainable on application to the secretary to the above-named committee, Montagu House, Whitehall, London, S.W.1. They embrace the following: Unemployment Insurance (Benefit) (Amendment) Regulations, 1936, Unemployment Insurance (Persons employed in agriculture and otherwise) (Miscellaneous) Regulations, 1936, and Unemployment Insurance (Post Office claimants) Regulations, 1936. With certain exceptions, not including the foregoing, the Minister of Labour is required to submit a draft to the Unemployment Insurance Statutory Committee before making regulations under the Act, and the committee is required to accord them sufficient publicity having regard to the persons affected. Every objection must be in writing and must state the portions of the draft which are objected to, the specific ground of objection, and the omissions, additions, or modifications asked for (*ibid.*, sub-s. (4)).

Recent Decisions.

IN *Robbins* v. *National Union of Printing, Bookbinding and Paper Workers* (*The Times*, 20th June), the court granted a declaration, claimed by the plaintiff, to the effect that the defendant union had no power to fine him on the ground he "accepted work but failed to turn up." The plaintiff denied the allegation. A member was liable under the rules to exclusion for knowingly acting to the detriment of the union and it was claimed that the greater included the less; if the union could exclude, it could impose a fine. This was negatived. Such rules were, it was held, to be construed strictly and there was no rule in terms supporting the claim.

Payne v. *Deputy Federal Commissioner of Taxation* (p. 508 of this issue) was a decision on Australian income tax law by the Judicial Committee of the Privy Council, which upheld judgments of the High Court of Australia to the effect that in order to calculate Australian income tax at a rate of so many pence per £ of "taxable income" for the purpose of the Income Tax Assessment Act, 1922–31, it was essential that "assessable income" in reference to certain interest on British Funded Stock should be expressed in terms of Australian currency. The position was not affected by the decision of the House of Lords in *Adelaide Electric Supply Co. Ltd.* v. *Prudential Assurance Co. Ltd.* [1934] A.C. 122.

The decision of SWIFT, J., in *Marriott* v. *Minister of Health*, 79 SOL. J. 942, quashing a compulsory purchase order which had been confirmed after all buildings in the clearance area to which it had reference had been demolished by the owner, has been upheld by the Court of Appeal (*The Times*, 25th June).

In *Paul, S.* v. *Paul, C. E.* (*The Times*, 25th June), it was held that a decree of divorce pronounced at Zurich, Switzerland, with reference to a marriage solemnised in New York, was invalid for want of jurisdiction, it being held proved that a judge of the State of New York (where the law on this point is similar to ours) would not recognise the decree for lack of domicile in Switzerland. A mere colourable residence was insufficient. The petitioner's previous marriage had therefore never been dissolved and her petition for judicial separation failed, the respondent being entitled to the decree of nullity asked for.

The Law Society's Report, 1936.

BRIEF mention may be made here of some of the salient features of the report of the Council of The Law Society which is more fully set out on p. 515 of the present issue. The report indicates that the present membership of the Society is once again the highest on record, embracing approximately two-thirds of the total number of practising solicitors—a fact which shows that a large proportion of those for whose benefit it exists are alive to the real value of its activities. The Society now has 10,753 members, of whom 4,305 practise in town and 6,448 in the country. The number of members who joined the Society last year, 400, shows a decline of sixty-four over that for the previous year, but, after allowing for deaths, resignations and exclusions, the number of members shows an increase for the year of sixty-nine. An increase of £1,789 10s. on the figure given for educational grants in last year's report is accounted for (except as to £100) by the additional teaching required for the new Final Examination. Grants amounting to £12,987 10s. have been voted from the Society's funds for the session 1936–37 to the approved schools, other than the Universities of Oxford, Cambridge and London, and the Society's Law School. Reference is made to the Solicitors Bill which has now passed through all stages in the House of Lords—and it may be added, the report stage in the House of Commons. If passed, this Bill will come into operation on 1st January, 1937. General assent will, we think, be accorded to the Council's opinion that it would be desirable that clerks should not be articled before the age of seventeen and a half years. A tendency for parents to withdraw their sons from school at the earliest possible age to the detriment of their general education is rightly deprecated. The Council has been largely occupied during the past year in considering the possibility of issuing rules under s. 1 of the Solicitors Act, 1933, to discourage touting and undercutting, the sharing of solicitors' costs with unqualified persons, and the activities of so-called legal aid societies. Draft rules to these ends have been prepared and discussed with the associated provincial law societies, while in addition, there have been interviews with building societies' solicitors who will be affected by the rules. Reference is made to the problem associated with the difficulties sometimes experienced by counsel under existing conditions in appearing in cases in which they are briefed. The observations of the Bar Council (which have been alluded to in these pages) are noted, and the Council of The Law Society decided that in the circumstances no further action could usefully be taken other than to forward to the Royal Commission on King's Bench business a copy of the views expressed by the Bar Council. In relation to a case where a county council tendered, instead of cash or a banker's draft, an ordinary cheque for completion of a purchase, the Council of The Law Society intimated that purchasers should not expect vendors' solicitors to accept completion money in any manner other than in cash or by means of a banker's draft drawn on a bank in the town in which the office of the vendor's solicitor is situated. In another case, on the intervention of the Council, a solicitor, who complained of payment of policy moneys direct to executors for whom he was acting, notwithstanding the production of a written authority from them, was informed by the assistant general manager of the insurance company in question that the directors had considered the position carefully and were prepared to instruct their staff to deal with claims direct with the legal profession instead of with the relatives of the assured. The general meeting of the members of the Society will be held on the 10th July, when the foregoing report of the Council will be presented. While it is not, perhaps, for us to comment on the report prior to its presentation, we may suggest that members will welcome the report as exemplifying the good work which the Council and its various committees have done for the profession during the past year.

Depositions in Criminal Cases.

A LITTLE over a year ago a minor sensation was caused by an announcement by a Metropolitan magistrate that he intended following a new procedure in taking depositions on the committal for trial at assizes or sessions of accused persons. The scheme proposed was that each witness's proof should be prepared before the preliminary hearing, accepted as a deposition subject to correction by the lower court, and sent to the higher court as a deposition. The Chief Metropolitan Magistrate later expressed his disapproval of the scheme as "irregular and contrary to law" and the magistrate in question replied that he would welcome a decision on the subject from a higher authority. (See 79 SOL. J., 54, 75 and 94.)

That authority was recently forthcoming in *Rex* v. *Gee*, *Rex* v. *Bibby* and *Rex* v. *Dunscombe*, which were heard in the Court of Criminal Appeal on 2nd May, 1936, by the Lord Chief Justice, Mr. Justice du Parcq and Mr. Justice Goddard (*The Times*, 2nd May). The appeals were against convictions at Oldham Borough Sessions for shop-breaking, and it appeared that in accordance with a practice which had prevailed at Oldham Police Court for many years, the Chief Constable first interviewed the witnesses, as he was entitled to do, and took statements from them which were subsequently typed out in narrative form. A copy was handed to the clerk and another to the magistrates. Neither the clerk nor the magistrates took anything down at the preliminary hearing, but the prepared statements were checked by the clerk, and were ultimately signed by the witnesses.

The Indictable Offences Act, 1848, s. 17, provides with regard to indictable offences that the justice or justices at the preliminary hearing before committal to prison for trial or admission to bail, "shall in the presence of such accused person, who shall be at liberty to put questions to any witness produced against him, take the statement on oath or affirmation of those who shall know the facts and circumstances of the case, and shall put the same into writing, and such depositions shall be read over to and signed respectively by the witnesses who shall have been so examined, and shall be signed also by the justice or justices taking the same." By s. 2 (2) of the Administration of Justice (Miscellaneous Provisions) Act, 1933: "No bill of indictment charging any person with an indictable offence shall be preferred unless either—(*a*) the person charged has been committed for trial for the offence; or (*b*) the bill is preferred by the direction or with the consent of a Judge of the High Court or pursuant to an order made under section 9 of the Perjury Act, 1911."

Mr. Justice Goddard said that it was clear that the provisions of s. 17 of the Indictable Offences Act, 1848, had not been complied with. That Act was passed to introduce uniformity into the practice of magistrates dealing with indictable offences preliminary to committal for trial. It was, his lordship said, of the utmost importance that magistrates should understand that there should be strict compliance with the provisions of the Act. The proceedings in these cases were so defective that there was no lawful committal for trial, and consequently under s. 2 (2) of the Act of 1933 no bill of indictment could be preferred against the appellants. The document which was produced purporting to be an indictment, was therefore not an indictment, and the appellants could not be tried on it. The court held that there had been a mis-trial, and that although in *Crane* v. *Director of Public Prosecutions* [1921] 2 A.C. 299, it was held that the court had power to order that a proper trial should take place, the court also had power in the interests of justice to quash the conviction. As the appellants had already been in custody for some time, the court elected to exercise the latter power, and quashed the convictions.

It was outside the scope of the above judgment to deal with any criticism of the present procedure in regard to the

taking of depositions in criminal cases. Those whose work lies in the police courts are familiar with the long drawn-out proceedings, sometimes running into days, that are necessitated by the taking of depositions in longhand. The various magistrates who have in the past somewhat illegally shortened the proceedings have merely been expressing in action their impatience with this antiquated procedure. Courageous and drastic proposals to deal with the anomalous situation were recently forthcoming from the reader of a paper at The Law Society's Provincial Meeting at Hastings in 1935 (79 SOL. J., 731). The writer of that paper, Mr. J. S. Walsh, LL.B., protested against the two hearings, the expense, the weeks of waiting, and the tension of two trials. The only object of the first hearing, he said, was to enable the magistrate to decide whether there was a *primâ facie* case, which could be done much more simply by short private interrogations or a scrutiny of the statements of material witnesses, sworn on oath. The writer quoted statistics to show that in the vast majority of cases the magistrates decided there was a *primâ facie* case. He criticised the solution of the problem by taking depositions in shorthand on the ground that it would not solve the main problem of two trials.

Nevertheless, the fact that there exists a possibility of obtaining the dismissal of a case on the first hearing provides a safeguard for the liberty of the subject that should not be lightly destroyed. It is true that the judge on the second hearing can always withdraw a case from a jury on the ground that a *primâ facie* case has not been made out, but where the law provides an additional safeguard as it does here, it should be jealously guarded as an essential part of the liberty of the subject.

Very few witnesses give evidence in the witness box corresponding with their proof. In criminal cases the divergence is frequently heavily marked, and the mere noting of corrections in proofs already taken by a police officer would be a grossly inadequate method of dealing with matters involving personal liberty. Cross-examination is an important weapon in the hands of an accused person at a preliminary examination, for the purpose of reducing what may otherwise be a *primâ facie* case to something that is not, and it is vital for effective cross-examination that the accused or his representative should be able to observe the demeanour of a witness under examination-in-chief. "Nothing should be returned as a deposition," the court held in *R.* v. *Arnold* (1838), 8 C. & P. 621, "unless the prisoner had an opportunity of knowing what was said and an opportunity of cross-examining the person making the deposition." It was held to be wrong in *R.* v. *Johnson* (1846), 2 Car. & Kir. 394, for the magistrates' clerk before the arrival of the magistrates and of the prisoner to examine the witnesses and take down what they stated and only to read them over to the witnesses after the magistrates and the prisoner had arrived, and merely to give the prisoner an opportunity for cross-examination on their proofs.

At the hearing of criminal cases at Assizes and Quarter Sessions, cross-examination is frequently directed to the differences which exist between evidence given at the time and evidence given in the court below. The statement has been attributed to Lord Chief Justice Cockburn that he did not attach much importance to the accordance between what a witness said at the trial and what he was reported to have said before the magistrates. With the greatest respect for this high authority (and with some doubt as to whether his words were correctly reported, or at any rate are not merely incidental to a particular set of facts), it must be stressed that the importance of a divergence between the two statements depends on the extent of the divergence and on the circumstances of the case, and the writer has himself been present at many trials where points of this nature have assisted in procuring an acquittal.

It must not be supposed that the existence of depositions operates solely in favour of the accused. "The object of taking the depositions," said Cresswell, J., in *R.* v. *Ward* (1848), 2 Car. & Kir. 759, "is, that if any of the witnesses, whose evidence is given before the magistrates, should be unable to attend at the trial, or die, there should not, by reason of this, be a failure of justice." The reader of the paper before The Law Society, referred to above, said that this at any rate was a very rare event, and did not in itself justify the taking of depositions. It is not a frequent occurrence, but it is not rare, and it is essential in the interests of justice that the rights both of the prosecution and of the defence should be safeguarded in this respect.

The true way out of the difficulty seems to be the solution which is gradually though belatedly being applied throughout the courts, that is, to have a shorthand note taken of the proceedings in the presence of the accused, typed out immediately, and read to the witnesses and signed. This would effect the necessary saving of time and expense, while at the same time preserving all the safeguards of the liberty of the subject which the law as to the taking of depositions provides.

Transitional Provisions of Electricity Supply (Meters) Act, 1936.

IT is probably well known that this Act, which received the Royal Assent on the 29th May, 1936, has been passed to meet the difficulty which arose as a result of the decision in *Joseph* v. *East Ham Corporation* (1935), 99 J.P. 431. That decision gave rise to serious misgivings in the minds of the officers of many local authorities and other bodies owning electricity undertakings. The facts and the decision clearly appear from the headnote thereto :—

> "A consumer of electricity having good reason to doubt the accuracy of the electricity meter installed in his house disputed the figure registered by the meter and declined to pay the sum claimed by the suppliers. No electric inspector as provided for by the Electric Lighting (Clauses) Act, 1899, Schedule, para. 35 (1), had been appointed for the district, so that the consumer's meter was not a certified meter as defined by the Electric Lighting Act, 1909, Schedule II, para. 50. While the dispute was in progress, the suppliers cut off the supply of current to the consumer, who brought an action in the county court claiming an injunction to restrain them from doing so. The county court judge having decided that the action of the suppliers was wrongful, and the suppliers having appealed,
>
> "*Held*, that, as the meter in the consumer's house was not a certified meter, there was no amount ascertained as due and owing by the consumer, and that, for that reason, and also because there was a *bonâ fide* dispute between the parties within the meaning of the Electric Lighting Act, 1909, s. 18, as to the amount of the current consumed, the suppliers were not entitled to cut off the supply."

The consequences of this decision might have been extremely serious for electricity undertakers, the more so if the public became generally aware of its import.

Section 1 (1) of the new Act provides for the appointment not later than "the appointed day" of meter examiners who will be charged with the examination and certifying of meters.

Under Section 1 (4) meter examiners are to have, subject to the later provisions of the Act, the powers and duties conferred on electric inspectors by ss. 50, 51 and 57 of the Schedule of 1899, and those powers and duties are to cease to be exercised by electric inspectors accordingly.

Section 3 (1) provides, again subject to the later provisions of the Act, that meters to which the section applies are to be deemed *for all purposes* to be "proper meters" for ascertaining the value of the supply, and the Schedule of 1899 is to apply in relation to any such meter as if it were a certified meter within

the meaning of that Schedule. Section 57 of the Schedule, however, which provides for differences as to the correctness of a meter to be settled by an electric inspector (now a meter examiner), is not to apply in relation to any meter to which s. 3 of the new Act applies.

It is provided by s. 3 (3) that the section is to apply to every meter installed, before "the appointed day," on the premises of an ordinary consumer (except any meter which is a certified meter within the meaning of the Schedule of 1899 or is the subject of a special agreement between the consumers and the undertakers).

Section 3 (2) creates a new procedure for settling differences as to the correctness of such meters in lieu of s. 57 of the Schedule of 1899, and states that *where any difference arises* between the consumer and any authorised undertakers as to whether a meter to which the section applies is or is not in proper order for correctly registering the value of the supply, or as to whether that value has been correctly registered in any case by such a meter, then, if a consumer desires the difference to be determined under the sub-section he may give notice to the undertakers, and in that event the difference is to be determined by a meter examiner appointed under the Act.

By s. 4 (1) "the appointed day" is to be such day as the Minister of Transport may by order appoint.

The Act came into force on the 29th May last. References to "the appointed day" relate only to the appointment of meter examiners and meters installed before that day which are to be deemed "proper meters" under s. 3, and not to the date when other provisions of the Act are to come into force.

The transitional provisions of s. 3 are drawn with a very laudable intent and are no doubt intended to put one in the position of letting "bygones be bygones." It appears, however, that a flaw exists in this section which in certain circumstances might in the near future give rise to difficulties.

These difficulties may perhaps best be appreciated from a practical example. Let us assume that a consumer is dissatisfied with his account for the first quarter of the present year and that this account was sent to him before 29th May last. By s. 3 the meter is deemed for all purposes to be a "proper meter" and is evidence, but not conclusive evidence, of that value. Before 29th May, 1936, or it may be since that date, he has disputed the figure registered by the meter, having good reason to doubt its accuracy, and has declined to pay the sum claimed by the suppliers. Now s. 3 of the new Act provides that the machinery of s. 57 of the Schedule of 1899 for determining disputes is not to apply to such meters as the one in this case and it is apparently intended that the machinery of s. 3 (2) should be substituted. Section 3 (2), however, begins: "Where any difference arises . . ." which can only relate to differences arising after 29th May, last.

It seems, however, that although the Schedule of 1899 (except s. 57) applies to this matter as if it were a certified meter, no machinery is available for the determination of the dispute. Thus the undertakers have the right to charge for and recover the amount registered without the consumer having any right to dispute its accuracy. That this is so where the consumer has disputed the accuracy before 29th May, 1936, is clear. Whether this is so where he has omitted to dispute the accuracy until after that date is more difficult but it is submitted that the result is the same and that the time when the difference arises is the time when the consumer feels a *bonâ fide* grievance and not when he actually gives written notice to that effect to the undertakers. This is supported by the wording of s. 3 (2) of the new Act.

Fortunately, the difficulty will not remain for any considerable period, but will only apply to differences arising but not settled before the Act came into force.

Costs.

ACTIONS FOR LESS THAN £100.

THERE are a number of provisions relating to costs which are often overlooked until they are brought sharply to one's notice.

The provisions with regard to costs in respect of actions which have been brought in the High Court, but which should have been brought in the county court, are an instance of this and the provisions of s. 11 of the County Courts Act, 1919, not infrequently are overlooked until the time arrives to prepare the bill of costs, or a settlement is being arranged.

It must be remembered in the first place that the county courts were designed in part to enable litigation in small cases to be conducted more cheaply than they could be conducted in the High Court, and a monetary limit was therefore imposed on the type of case that could be taken to the latter, so as to minimise the expenses of the losing party.

In order to ensure that the intention of the Legislature is being carried into effect, s. 11 of the County Courts Act, 1919, which amends s. 116 of the principal Act, was passed. The amended section provides that if any action is brought in the High Court which could have been brought in the county court, then the plaintiff shall only be entitled to costs on the High Court scale if—

(*a*) in an action founded on contract more than £100 is recovered, or

(*b*) in an action founded on tort more than £50 is recovered;

whilst no costs at all will be recoverable if—

(*a*) in an action founded on contract less than £40 is recovered, or

(*b*) in an action founded on tort less than £10 is recovered.

Costs on the county court scale will be allowed where—

(*a*) in an action founded on contract a sum between £40 and £100 is recovered, and

(*b*) in an action founded on tort a sum of between £10 and £50 is recovered.

In cases which come within the ambit of this section, where the plaintiff fails, and the defendant is awarded costs, then the latter will, of course, recover costs on the High Court scale whatever the amount or the nature of the claim.

Many important and interesting points arise on this section, and a few may be noticed here. Thus, if the amount claimed by the plaintiff is more than the prescribed limit, but is reduced below that limit after the action is brought by reason of a payment on account by the defendant, and the plaintiff subsequently obtains judgment for the balance, he will not be deprived of his costs: see *Pearce* v. *Bolton* [1902] 2 K.B. 111. Reference may also be made to the case of *Lamb Bros.* v. *Keeping* [1914] W.N. 225, where a writ was issued claiming a specific amount, and the defendant paid all but £4 10s. of that amount without knowledge that a writ had been issued, and the action was remitted to the county court, where the plaintiff obtained judgment for the balance. The plaintiff in that case was held to have recovered the amount claimed on the writ, and was therefore entitled to costs appropriate to that amount.

Similarly, in *Barker* v. *Hampstead* (1889), 23 Q.B.D. 8, where the plaintiff obtained judgment under Ord. XIV for all but £3 of the amount claimed, and was compelled to proceed to trial for this balance, he was held to be entitled to costs on the High Court scale in respect of the whole of the action.

It is important to notice in this respect that where the amount of the claim is reduced below the limits prescribed above, by reason of a *set-off*, as distinct from a *counter-claim*, then the section applies: see *Lovejoy* v. *Cole* [1894] 2 Q.B. 861. This arises from the principle that a set-off is in the nature of a defence, whilst a counter-claim is in the nature of a cross-action: see Cockburn, C.J., in *Stooke* v. *Taylor* (1880), 5 Q.B.D. 569. It will be apparent from this that s. 11 should

be kept in mind in determining the manner in which an action is to be defended.

Where an injunction is claimed in addition to damages, then the provisions of s. 11 do not apply, even if the injunction is obtained before the trial, and the damages recovered are below the limit, provided the principal claim in the action is the claim for an injunction: see *Doherty* v. *Thompson* (1906), 94 L.T. 626.

Further difficulties sometimes arise in determining whether an action is founded on contract or on tort. Thus, it was held in *Bryant* v. *Herbert* (1878), 3 C.P.D. 389, that an action for detinue is founded on tort, so is an action against a carrier for misdelivery of goods: see *Pontifex* v. *Midland Railway* (1878), 3 Q.B.D. 23, but an action against a common carrier for loss of goods is founded on contract: see *Fleming* v. *Manchester Railway* (1879), 4 Q.B.D. 81.

It will be observed that there is an important proviso to the section which states that if the court or judge, or other officer of the Supreme Court before whom the action is tried, is satisfied that the action was properly brought in the High Court, or it is clearly shown that the defendant objected to the action being brought in the county court, then the court, judge or other officer of the Supreme Court shall have discretion to allow costs on the High Court scale, whatever the amount involved or the nature of the action.

This brings us to an interesting point, and one which, in fact, arose only recently in practice, namely, whether in such a case, where the defendant had objected to the action being transferred to the county court, and he was successful in the action, he was entitled to costs on the High Court scale. We shall consider this and the remaining points arising out of the section in our next article.

Company Law and Practice.

Underwriting and the Payment of Commission by a Company—II.

In continuation of our consideration last week of the nature of underwriting transactions and the statutory regulations (s. 43 of the 1929 Act) which govern the payment by a company of underwriting commission, this week I am going to deal with some of the principles that are applicable to the rather complicated and difficult subject of the legal aspect of underwriting agreements.

When a public issue is in contemplation, the usual procedure is for a firm of stockbrokers to be approached by the promoters and acquainted with details of the proposed issue, the object being to secure the interest of the brokers in the matter. If the promoters are successful in this attempt, the company making or responsible for the issue, or the promoters, as the case may be, enter into a contract with the brokers; the terms of that contract, put broadly, being that, in consideration of their receiving a commission to be paid in any event, by way of percentage on the issue as a whole, the brokers undertake to subscribe for a certain, or any, proportion of the shares thus to be issued which the public may fail to take up. Thus, in effect, the promoters are insured against lack of response by the public and their future plans are not hampered. I do not propose to delve further than this into the preliminary details of an underwriting contract, and this brief summary of them must suffice for our present purpose.

The form of the underwriting contract is generally that of a letter, embodying the terms upon which the underwriters are prepared to offer their services, from the underwriters to the promoters or to the company responsible for the issue, whichever it may be, which terms are accepted by the brokers or the company. Before we proceed to the question of offer and acceptance of an underwriter's letter as constituting a binding contract, we should notice that the liability on a contract to apply for shares under an underwriting agreement passes to the executors of the person contracting, as the contract is not one involving personal skill: see *Warner Engineering Co., Ltd.* v. *Brennan*, 30 T.L.R. 191. As Horridge, J., pointed out in *In re Worthington: ex parte Pathé Frères* [1914] 2 K.B. 299, at p. 310, there is no reason why the contract cannot be equally well fulfilled by the underwriter getting somebody else to take it over and to get the subscriptions for him; and in *Warner Engineering Co., Ltd.* v. *Brennan, supra*, in the opinion of Bray, J., if they were to hold that a contract to apply for shares was a personal contract they would be laying down a doctrine which had never yet been laid down and which would seriously embarrass a great many dealings on the Stock Exchange. In passing, we may usefully remind ourselves that the decision in *Taylor* v. *Caldwell*, 3 B. & S. 826, 839, contains the principles which apply to contracts of a personal character.

Now, with regard to the question of how far and in what circumstances acceptance of the underwriter's offer is necessary to constitute an effective contract; "in an ordinary case, to constitute a contract by correspondence, there must be first a proposal, secondly an acceptance of the proposal, and thirdly a communication of that acceptance": per Chitty, J., in *Re The Bulfontein Sun Diamond Mine, Ltd.; ex parte Cox Hughes and Norman*, 75 L.T. 669, at p. 671. But, so far as concerns underwriting contracts, whether the letter amounts to a concluded contract, or whether it is merely an offer, the acceptance of which must be communicated to the underwriter, depends upon the terms, and therefore "attention must be paid to the terms of the underwriting letter in each particular case": per Lindley, L.J., in *In re Consort Deep Level Gold Mines, Ltd.; ex parte Stark* [1897] 1 Ch. 575, at p. 592. In that case, the same learned judge dealt in these words with this question of acceptance, at p. 591: "... it is familiar law that the mere acceptance of an offer, unless it is brought to the notice of the person making it, does not, as a rule, convert the offer into a contract. There are exceptions to this rule, based in some cases on the ordinary course of business, and in other cases on special circumstances which render acceptance unnecessary. Notice of performance by the other side is often all the notice of the acceptance of the offer which the person making it can require: see *Carlill* v. *Carbolic Smoke Ball Co.* [1893] 1 Q.B. 256, 262. In my opinion this may often be the case with underwriting agreements. I do not accept the view that they are like bets and must be accepted before the event on which they are to become operative is known. Speaking generally, an underwriter of shares agrees to take so many, not exceeding a certain number, as a company may require in order to make up the total number without which business cannot be commenced; and, until the company knows how many it wants from the underwriter, I do not see how it can be in a position to accept his offer." In *ex parte Stark*, the underwriter, in his letter to the promoters, offered to subscribe or find subscribers, on or before the day following that appointed for the closing of the list for subscriptions for shares, for 10,000 shares in the Consort Company, "or such less number as may be accepted by you." The court held that, for a binding contract to exist, it was essential that his offer should be accepted by the promoters, if accepted at all, before that day, and that they should inform him of the number of shares for which it had been accepted. On the other hand, an instance of an underwriting letter where the terms were such that notice of acceptance was inferred from the retention of the letter by the person to whom it was addressed, without more, is given by the *Bulfontein Sun Diamond Mine, Ltd. Case*, to which I have already referred. Shortly, there the underwriting letter to the promoters contained a clause whereby the underwriter agreed to sign and lodge with the promoters, whenever called upon, the necessary application for the specific number of shares underwritten, with cheque for the deposit attached thereto, and it contained an authority to the promoters to

apply for, and to the directors to allot, these shares to the underwriter, if he himself failed to apply. The letter was retained by the promoters without objecting to it or notifying their acceptance; and from this the court inferred that, by such retention, the promoters had signified their acceptance of its terms, and that the underwriter so understood the transaction; for had the promoters meant to reject the letter, they would have been bound to return it without delay.

In the case of *In re Hemp, Yarn and Cordage Company; Hindley's Case* [1896] 2 Ch. 121, a curious point arose in this way: H sent to the promoters a letter whereby he agreed that upon the public issue of the company's shares he would, in consideration of a percentage, subscribe for 400 of them, but if the public subscribed the whole issue, then he would not be allotted any. The promoters and directors were also authorised, if H did not apply, to apply for them in his name and to allot them to him, respectively. The letter ended with these words—"This engagement is binding on me" (i.e., the underwriter) "for two months from this date." The meaning of those words that I have quoted was the question that fell to be decided by the Court of Appeal; the two possible constructions being that the offer was open for two months for rejection or acceptance, and, alternatively, that the two months referred, not to the time for acceptance of the offer, but to the duration of the agreement or engagement, which would become binding upon acceptance of the offer constituted by the letter. The court, not without some hesitation, eventually decided in favour of the first of these two possible constructions, so that, on the particular facts, the promoters could defer their acceptance of the offer until the result of the invitation to the public and the sufficiency of the public subscription were known, and could then, by acceptance bind the underwriter.

It is a not unusual term of underwriting letters that, in the event of the underwriter failing to apply for the shares for which he has become liable to apply, authority is given to the promoters to apply for them in his name and to authorise the directors of the company to allot them to him. This term is illustrated by the decision in *In re Harvey's Oyster Company: Ormerod's Case* [1894] 2 Ch. 474, where underwriters, by an underwriting letter, agreed with the vendor to the company, who was also the promoter, in consideration of a commission, at any time within three months, "if and when called upon" by him, "to subscribe or find responsible subscribers for" a certain number of the company's shares, to be proportionately reduced in case the shares were partially subscribed for by the public. The vendor was authorised by the agreement, "in the event of any underwriter" not subscribing or finding responsible subscribers as above mentioned, "to subscribe for the shares in the underwriter's name, and to authorise the directors to allot them and to register the underwriters' names in respect thereof." It was held that a request to the underwriters to subscribe or find responsible subscribers was a condition precedent to their being under liability to be treated as shareholders, and since no such request had been made, their names must be removed from the list of contributories in the winding-up of the company. Another decision to this effect is the *Bulfontein Sun Diamond Mine, Ltd. Case, supra;* and see also *In re Consort Deep Level Gold Mines, Ltd.; ex parte Stark*, also *supra.*

An important point that arises in connection with this authority to apply for the shares on the underwriter's behalf, in the event of his failure, and to allot them to him, is the revocability or irrevocability of the underwriter's authority so to act. The test of revocability is whether or not it is an authority coupled with an interest. In *Clerk* v. *Laurie* 2 H. & N. 199, Williams, J., used these words at p. 200: "What is meant by an authority coupled with an interest being irrevocable is this—that where an agreement is entered into on a sufficient consideration, whereby an authority is given for the purpose of securing some benefit to the donee of the authority, such an authority is irrevocable." This principle was applied to an underwriting letter in the case of *In re Hannan's Empress Gold Mining and Development Company; Carmichael's Case* [1896] 2 Ch. 643, whereby the underwriter agreed, first, for valuable consideration by way of commission, to subscribe for 1,000 of the company's shares, in the event of the public not taking them up, and secondly, that his agreement and application should be irrevocable, and, notwithstanding any repudiation by him, should be sufficient to authorise the promoter (who was vendor to the company) to apply for the shares on the underwriter's behalf and the company to allot them to him, the terms of this letter having been accepted by the promoter. On the day when the subscription list was advertised to open, the underwriter stopped the cheque that he had given for the deposit on the 1,000 shares, and he wrote three days later to the promoter and the company's secretary repudiating the agreement. Because of the lack of public response, the underwriter had become bound to take 980 shares, for which the promoter applied on his behalf and which the company allotted to the underwriter, his name being placed on the register in respect thereof. The Court of Appeal held that, the object being to enable the promoter and vendor to obtain his purchase money, the authority conferred a benefit on the donee, that it was therefore irrevocable, and that the underwriter's name was properly on the register. And lastly, before we leave the subject, we should observe that, comparatively recently, *Carmichael's Case* was followed and applied to the case of sub-underwriting contracts by the decision in *In re Olympic Fire and General Reinsurance Company, Ltd.; Pole's Case* [1920] 1 Ch. 582, 2 Ch. 341.

A Conveyancer's Diary.

Annuities: Income Fee of Corporate Trustee.

THE recent decision of Clauson, J., in the case of *Re Hulton's Will Trusts* [1936] W.N. 170; 80 SOL. J. 386, raises a point which, though small, may well deserve the attention of practitioners. The testator appointed his wife and the Midland Bank executors and trustees of his will, and directed them to hold his residuary estate upon trust, out of the yearly income thereof to pay his wife such an amount as, after deducting income tax and sur-tax at the current rates, would give her the clear yearly sum of £12,000. Subject thereto, the estate was held on other trusts not material to our present problem. The testator declared that the bank should be entitled to remuneration in accordance with its scale of fees in force at the date of his will. He also gave his wife a certain house for life, free of rent, rates, taxes and insurance.

The summons asked whether any, and if so what, part of the income fee of 15s. per cent. per annum charged by the bank was chargeable against the annuity and the sums paid as outgoings in respect of the house.

The learned judge held that the whole of the fee was chargeable against residuary income, whether one regarded it as a legacy to the bank or as an authorised trust expense, "just as in the case of an ordinary residue all administration expenses must fall upon" residuary income. He distinguished the decision of Astbury, J., in *Re Bentley* [1914] 2 Ch. 456, as "turning entirely on the provisions of the Public Trustee Act, 1906, and the Public Trustee (Fees) Order, 1912." In the present case the fee was not paid under any statute, but under a direction in the will.

While not presuming to doubt the correctness of the learned judge's decision in the case before him, we may perhaps be permitted to question the interpretation put upon the decision of Astbury, J., in *Re Bentley.* It is true that provisions of the Public Trustee Act and the Order are set out in a footnote to the report and were referred to by counsel. But the

learned judge's judgment, which was very brief, proceeded entirely *ex æquo et bono*. He expressly stated that there was no authority upon the point, and did not refer to the Act or the Order. He said: "*Primâ facie*, I should have thought that the income fee, from its very name, ought to come out of the pocket of the person receiving the income. It is really a fee to recoup the Public Trustee for seeing to the investments and paying the income to the life-tenant of residue or the annuitants as the case may be. I think the fair thing is to pay the income fee attributable to the annuities out of those annuities and the income fee attributable to the balance of income out of that balance, and so I decide." He then dealt with another small point, and concluded: "I think this is the fairest decision I can give in the absence of anything further to guide me."

The ordinary practitioner, and, what is more important, the ordinary lay client, will hardly be disposed to quarrel with this statement of what is fair, however much respect must be paid to the decision in *Re Hulton* on the point of law. As the point is one on which a decision of a higher court cannot be very probable, it will be advisable to make express provision in future wills to provide for each beneficiary to be charged with his own income fees in cases of this sort. Such a provision can, of course, be simply and readily inserted at the end of the clause empowering the corporate trustee to charge fees for its services.

Stamp Duties on Break-up of Settlements.

Another decision which draws attention to the demands upon the wariness of practitioners is that of the Court of Appeal in *Fleetwood-Hesketh* v. *Commissioners of Inland Revenue* [1936] 1 K.B. 351, concerning stamp duties. At the material date, at the end of 1932, A was life-tenant of certain settled land and capital moneys, and his son B was tenant-in-tail in remainder. By arrangement between A and B, B disentailed; his father then purchased from him for £146,000 the absolute reversion. With this sum and a further sum of £14,000 which does not affect the stamp duty point (making £160,000 in all) the son purchased some of the settled investments. The result, therefore, was that the settlement was broken up, and the son took the £160,000 worth of investments absolutely, while the father took the rest absolutely. Apart from the disentailing deed, the only document was a receipt by the son for the purchase price of his reversion, scheduling details of the subject-matter. It was this receipt which the revenue sought to charge with stamp duty at £1 per cent. *ad valorem* on the sum of £146,000. The decision of Finlay, J., at first instance does not seem to have been reported, but it appears that he held that the receipt was chargeable under s. 54 of the Stamp Act, 1891 (which charges and defines conveyances on sale).

On appeal, the Court of Appeal upheld Finlay, J. Lord Hanworth, M.R., felt in doubt whether s. 54 covered the case, but held that the receipt was chargeable with the same duty under s. 59, which charges "any contract or agreement . . . for the sale of any equitable estate or interest in any property whatsoever, or for the sale of any estate or interest in any property except lands, tenements, hereditaments or heritages, or property locally situated outside the United Kingdom, or goods, wares or merchandise or stock or marketable securities, or any ship or vessel or part interest, share or property of or in any ship or vessel," as if such agreement were an actual conveyance. Romer, L.J., held that the document was not a conveyance on sale, and so was not within s. 54, but that it was within s. 59, since he did not think that the Legislature intended to distinguish a written record of an oral agreement from a document which was itself the agreement.

Maugham, L.J., apparently thought that the document was a conveyance on sale within s. 54, but that, if he were wrong, it was still within s. 59.

The main thing that emerges from these somewhat confusing judgments is that the Crown succeeded in getting two lots of duty, as Romer, L.J., points out (p. 363), namely, *ad valorem* duty on the sale from the son to the father of the reversion, and *ad valorem* duty on the sale of the investments by the trustees to the son. As the learned lord justice also pointed out (p. 362), once the disentail (which reserved the usual joint power of appointment) had been executed, all that was necessary was for the two of them to direct the trustees to transfer the necessary amount of securities to the son. Such transfers would have attracted *ad valorem* duty as voluntary dispositions *inter vivos* under s. 74 of the Finance (1909–10) Act, 1910, but that would have been all. This was not a case where there was any question of the parties having sought legitimate means to economise on duty; it was one where they completed a comparatively simple transaction in a rather roundabout way and succeeded in attracting double duty.

The point which this rather unhappy case brings home is this: in conveyancing, the simplest and briefest way is the best. That is so in any event, not merely on artistic grounds of elegance, but for convenience when the transaction has to be explained, whether to the lay client or to persons subsequently considering the title. But it is doubly so when we look at the transaction from the point of view of stamp duty, which is a tax on documents. Every unnecessary document and every unnecessary clause in a document may attract unnecessary duty. The present case is in a complicated way on the same footing as the simple and well-known one concerning vesting declarations on the appointment of new trustees under s. 40 of the Trustee Act, 1925, to which attention is drawn on p. 1342 of the 12th ed. of "Wolstenholme"; that section implies a vesting declaration on the appointment of a new trustee; an express declaration should not be used as it attracts an extra 10s. stamp and is quite unnecessary and useless.

That is the point of general importance. With regard to the particular points raised by the case, little can be said as the position is not very clear. But the parties' misfortune serves a useful purpose in drawing attention to ss. 54 and 59 of the Stamp Act. Their scope is very wide. According to Maugham, L.J., and Finlay, J., s. 54, which seems only to charge "conveyances on sale," as the expression is ordinarily understood, goes much farther and charges documents which on their face are mere receipts, or records of a bargain, and have no operation as transfers. According to all the members of the Court of Appeal, s. 59 charges not merely documents which embody actual agreements, but anything which can be described as memoranda, made subsequently for the convenience of the parties, of parol agreements, so far as such agreements would, if themselves written, be within the section.

Landlord and Tenant Notebook.

Relief to Mesne Tenant on Forfeiture of Head Lease.

When an undertenant finds that the head lease has been forfeited in circumstances which permit of relief being granted, he has, if he wishes to preserve his position, to undertake expenditure for which he did not bargain. Suppose, however, that he does not wish to preserve his position; is he any better off? If, being disappointed in the way things have worked out and weary of his commitments, he welcomes the opportunity of being rid of them, does the matter rest with him? An answer is to be found in the decision in *Dendy* v. *Evans* [1910] 1 K.B. 263, C.A., a case which throws a good deal of light on the working of the law of forfeiture of leases generally.

The case arose out of the forfeiture, in 1908, of a repairing lease for twenty-one years granted in 1891, the premises

having been underlet (covenants repeated) for the rest of the term less one day in 1907. For present purposes, the events can be set forth as follows: call the superior landlord, S, the mesne lessor, M, and the undertenant, U. The following events occurred within a space of a few months: (1) S served a forfeiture notice, for breach of covenant to repair, on M, who informed U; (2) S served a writ of ejectment on M; (3) M applied, in the action, for relief and obtained an order "that all further proceedings in this action be stayed and that the applicant be relieved from any forfeiture of the lease dated the 24th April, 1891 . . . and that she do hold the demised premises according to the said lease without any new lease." (4) M issued a writ against U claiming three quarters' rent accrued due since the service of the forfeiture notice.

At first sight there appears to be much to be said for U, whose reaction appears to have been the very opposite of Francisco's "for this relief much thanks." Ingratitude not being a consideration in legal proceedings, he could argue that the writ issued by S manifested a final and irrevocable election to forfeit the lease of which his own interest was a derivative.

But the true position was expounded by Cozens-Hardy, L.J., whose judgment contains an admirably terse historical survey of the law of forfeiture. Once upon a time, when Equity saw fit to grant relief, it did one of two things according to the stage which the landlord's activities had reached. If he had not yet got his judgment, it prevented him from getting it. If he had, it made him grant a new lease.

Now the machinery of statutory relief against forfeiture for causes other than non-payment of rent is designed to prevent rather than to cure. When relief is potentially available, the landlord has to give the tenant a chance of putting things right before he issues a writ or attempts to re-enter even peaceably ("by action or otherwise"). This can be seen reflected in the order cited under (3) in my second paragraph. "That all *further proceedings* be stayed . . . that she do hold the demised premises according to *the said lease* without any new lease." So the court held that there was nothing in the issue of the writ by S against M that put an end to the underlease granted to U; and the order of the Master had got rid of S's right of re-entry.

Farwell, L.J., hit the nail on the head by pointing out that it was really an abuse of language to characterise the procedure as "relief." The word is used (see *Nind* v. *The Nineteenth Century Building Society* [1894] 2 Q.B. 226, C.A.) to describe "the remedial action of the Court of Equity in cases where a penalty or forfeiture has been incurred, which the court thinks it equitable that the complaint should not lie under or suffer." What happens under the statutory restrictions is that if the tenant complies with the notice there is nothing from which he requires to be relieved!

For those who may think that the facts of *Dendy* v. *Evans* are so exceptional that they will never occur again, I may amplify the narrative by stating that the plaintiff was not the original mesne tenant, but an assignee; that the assignment occurred after the forfeiture notice had been served; and that she bore the same name as the superior landlord, whose consent to the assignment had not been withheld.

Normally, of course, an undertenant stands to gain if the mesne lessor seeks relief, for vesting orders involve much expense. But if he would welcome rather than deplore the extinction of his tenancy, does *Dendy* v. *Evans* cover all the possibilities?

The Conveyancing Act, 1881, and L.P.A., 1925, expressly left the law relating to re-entry for non-payment of rent undisturbed. The position is adverted to in the Common Law Procedure Act, 1852, s. 210, which admits of relief—and this time it certainly is relief—being granted as much as six months after execution of judgment for possession. While the grant or refusal of relief is a matter of discretion, the tenant has been held to have a "right" which may be assigned. If then, an undertenant, after the issue of a writ by the superior landlord claiming possession on the ground of forfeiture for non-payment of rent, were to disclaim all further interest in the premises, could he be made liable for rent since accrued due if the mesne tenant obtained relief?

Now the provision contained in the Common Law Procedure Act, 1852, referred to above, is essentially a restrictive provision, designed, one might say, to prevent the zeal of the Court of Chancery from outrunning its judicial discretion. The section goes on to enact that failing payment of rent, arrears and costs or proceedings for relief within six months, the landlord is to hold the premises discharged from the lease; so the tenant's rights are, if anything, cut down by the section. While s. 212, which deals with the right to a stay and the discretionary right to be relieved in equity and then to have and enjoy the demised lands according to the lease thereof made without any new lease—was expressly limited to cases in which rent and arrears and costs were paid *before trial.* But there followed the Common Law Procedure Act, 1862, s. 1 of which deals with the power to relieve "up to and within the right time after execution executed"—and then if the lessee be relieved, he shall hold the demised lands "according to the lease thereof made, without any new lease."

The result appears to be that if rent, arrears and costs are paid before judgment (though after issue of writ) no undertenant can hope to take advantage of a forfeiture of a head lease for non-payment of rent. If relief be sought by the mesne tenant at a later stage, the undertenant's position might conceivably affect the exercise of the discretion. Relief is normally refused only when one of the parties has altered his position; the interests of a third party do not appear to have demanded consideration; but they might. All one can say is that in *Dendy* v. *Evans*, if the court were aware of the underlease, it was the undertenant who was to blame for the disrepair.

Our County Court Letter.

THE REMUNERATION OF SOLICITORS.

In a recent case at Gloucester County Court (*Treasures* v. *Baker*) the claim was for £31 1s. 4d. as the balance of professional charges for investigating a title. The defendant counter-claimed £20 as damages for negligence, and had paid into court the balance, viz., £11 1s. 4d. The plaintiffs' case was that, while acting for the vendor of a farm, they were also instructed to act for the purchaser, the defendant. The vendor had purchased the farm in 1925, on a sale under an order of the court, and had informed the plaintiffs that there were no arrears of tithe rent-charge. Without approaching the tithe owners the plaintiffs had accepted the oral statement of the vendor, and completion of the sale to the defendant took place in March, 1935. A demand was then made upon her for £40 13s. 9d. for arrears of tithe, which the plaintiffs paid out of their pockets, reserving any right of action against the vendor. As the defendant had thus suffered no damage, and the plaintiffs, although misled by the vendor, had not been negligent, their case was that they were entitled to the amount claimed. The defendant's case was that, apart from the arrears of tithe, she had had to employ other solicitors to rectify the title in the following respects, viz., (1) obtaining an office copy of a master's certificate, in the action in which the farm was sold; (2) obtaining an extract of an inclosure award, dated the 29th September, 1918; (3) deducing a thirty years' title, for most of the farm, in accordance with the contract of sale to the defendant. His Honour Judge Kennedy, K.C., gave judgment for the defendant on the claim and counter-claim, subject to taxation of the subsequent bill. If any reduction below £20 resulted, the plaintiffs to receive the difference.

SHOPKEEPERS' LIABILITY FOR ACCIDENTS.

In *Mackenzie* v. *Phillips & MacConnal, Ltd.*, recently heard at Bournemouth County Court, the claim was for £100 as damages for negligence. The plaintiff, who was aged sixty-six, had visited the premises of the defendants, who were fine art dealers, to inspect a picture. The assistant said that the picture could be best appreciated if one stood away from it. The plaintiff therefore took one step backwards, and fell down two flights of stairs. Having had twenty days in hospital, through pleurisy supervening, the plaintiff had incurred £30 as out-of-pocket expenses. The defence was that there was a red sign in the shop, pointing down the stairs, but the plaintiff took three or four steps backwards. The assistant then called out "Mind," and grabbed the plaintiff, but was unable to prevent her falling. Having inspected the *locus in quo*, His Honour Judge Hyslop Maxwell observed that staircases in shops were usually obvious to everybody from every angle. The stairs in question, however, were not noticeable until a customer was almost in line with the top. There was no contributory negligence by the plaintiff, and judgment was given in her favour for £70 and costs. Compare a previous case under the above title in the "County Court Letter" of our issue of the 14th December, 1935 (79 Sol. J. 936).

ALLOWANCE TO CONVALESCENT MINERS.

In the recent case of *Lynn* v. *Kelly and Another*, recently heard at Durham County Court, the claim was for £1 5s. as the personal allowance due in respect of a period of convalescence at Cornishead Priory. The latter was maintained by the Durham Miners' Association, whose members paid a levy of 2d., four times a year, to provide pocket money for patients. The plaintiff was one of forty-nine deputies who subscribed to the fund, but, although he was a paid-up member, he had been refused the allowance. The defendants were the secretary and treasurer respectively of the Miners' Lodge of the Bowburn Colliery of Dorman Long & Co. Their case was that the association, which had never been incorporated, was, in fact, dissolved by a resolution at a meeting held in 1934. Although the plaintiff denied any knowledge of such a meeting, the notice convening it had been posted for ten days. The object was to provide an inducement to workmen at the colliery, who were not members of a trade union, to join the Miners' Lodge. Membership would then entitle them to benefit, which they could not otherwise be entitled to receive. His Honour Judge Richardson observed that an attempt had been made to deprive subscribers to the fund of the benefit for which they had paid. This was a method of obtaining members of the Lodge by compulsion, although the benefit was for everybody, whether members of the Lodge or not. Judgment was given for the plaintiff, with costs.

RECENT DECISIONS UNDER THE WORKMEN'S COMPENSATION ACTS.

WIDOW'S DEPENDENCY.

In *Logan* v. *Wharncliffe Woodmoor Colliery Co. Ltd.*, at Barnsley County Court, the applicant's case was that her late husband had been crushed by a run of tubs in 1935, and had died from his injuries, leaving her totally dependent. The respondents denied the dependency on the ground that the applicant, following a conviction for the murder of her child, had been found insane, and was detained in Broadmoor at the time of the death of the deceased. She had since been released, and was in fact earning 21s. per week. His Honour Judge Frankland observed that it was a condition of the applicant's discharge that she should take employment at 21s. per week. This amount was earned under economic compulsion, and, if her husband had lived, he would have been able to keep her, without any need for her to go to work. The applicant's earnings must therefore be disregarded, and she was entitled to £300 as for total dependency. In the event of a successful appeal, whereby the applicant might be held to be only partially dependent, the award would be for £295.

ACCIDENT TO OFFICE CLEANER.

In *Graham* v. *C. & J. Hampton, Ltd.*, at Sheffield County Court, an award was claimed by a woman who had worked as an office cleaner for twenty-one years. On the 29th September, 1935, while cleaning the respondents' office, the applicant fell over a bucket, and sustained fractured ribs, which had since prevented her from doing any but light work at home. The respondents admitted the accident and partial incapacity, but denied that the applicant was a "workman," as she habitually paid other people to do the work, for which she received £2 a week. His Honour Judge Frankland held that the applicant was a workman, and an award was made of 10s. a week.

THE DEFENCE OF ADDED PERIL.

In *Phillips* v. *Whitcher* at Lymington County Court, the applicant's case was that her deceased husband had been knocked off a ladder, while working for the respondent, who contended that the accident was caused by an added peril. The evidence was that the deceased was repairing the roof of a farm building and his ladder rested on the opposite side of a lane. There was room for ordinary vehicles to pass underneath, and two did so, but a third (a coal lorry) had a stay projecting from the back which caught the ladder. The lorry had gone slowly, in view of the obviously small clearance, but the deceased had taken the risk of staying on the roof. His Honour Judge Hyslop Maxwell held that, as the deceased had no instruction to come down in such circumstances, he had not added to the peril of his employment. An award was accordingly made of £600 and costs.

Obituary.

Sir FREDERICK CHAPMAN.

The Hon. Sir Frederick Revans Chapman, formerly a Judge of the Supreme Court of New Zealand, died on Wednesday, 24th June, at the age of eighty-seven. He was educated at Melbourne Grammar School, and in France, Germany and Italy, and was called to the Bar by the Inner Temple in 1871. He practised at Dunedin until 1903, when he was appointed to the Supreme Court. He retired in 1921, but returned to the Bench and finally retired in 1924. He received the honour of knighthood in 1923.

Mr. H. L. ROBINSON.

Mr. Herbert Lewin Robinson, Barrister-at-Law, of Observatory Gardens, W., died at Highgate on Wednesday, 17th June, at the age of sixty-four. Mr. Robinson was called to the Bar by the Middle Temple in 1914.

Mr. A. C. MACINTOSH.

Mr. Albert Charles Macintosh, solicitor, a partner in the firm of Messrs. Macintosh, Thomas & Co., of Cardiff, died recently at his home at Llandaff, at the age of seventy-six. Mr. Macintosh served his articles with Messrs. Pitman & Sons, of London, and was admitted a solicitor in 1883. He had practised at Cardiff since 1888. He was President of the Cardiff and District Incorporated Law Society in 1911, and had been Honorary Secretary of the Society since 1918. He was also Chairman of the Joint Board of Legal Education for Cardiff and Swansea University Colleges.

Mr. H. OWEN.

Mr. Hely Owen, solicitor, a partner in the firm of Messrs. Owen, Bailey & Hulme, of Huddersfield, died at Huddersfield on Wednesday, 24th June. Mr. Owen was admitted a solicitor in 1885.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Libellous Letters to Registrar.

Q. 3332. A county court defendant writes to the registrar several libellous letters concerning the solicitors for the plaintiff. We shall be glad to have your valued reply to the following queries: (*a*) Does the registrar owe any duty to bring the letters to the notice of the solicitor concerned? (*b*) Would it be improper for the registrar so to do? (*c*) Is such solicitor entitled to see the letters? and (*d*) use them as the basis for a libel action?

A. The contents of the letters would be absolutely privileged, if read in court, and it is doubtful whether writing them to the registrar constitutes publication. The question does not state at what stage of the proceedings the letters were written, but the opinion is given that: (*a*) The registrar does not owe any duty to bring the letters to the notice of the solicitor concerned. The registrar will probably not be impressed with the contents, so that the damages (if any) would be only nominal: (*b*) Without saying that it would be improper for the registrar to communicate the contents, the opinion is given that no useful purpose would be served by his so doing: (*c*) The solicitor is not entitled to see the letters, as the records of the court are not public documents, except in so far as a right of search is given by statute, or a right to production (on subpœna *duces tecum*) is given by rules of court in a pending action: (*d*) This question does not arise, in view of answer (*c*). The solicitor would be very ill-advised, however, to bring an action. The result would be to spread the allegations indefinitely, even if they were disproved.

Defects in New Houses.

Q. 3333. A purchaser contracted to buy a house on a new building estate on the 25th August, 1934. The house at the time of the contract was a completed one awaiting its first purchaser, and the only outstanding item consisted of the internal decorations as to which the vendor gave an undertaking when the purchase was completed on the 17th January, 1935. The contract contained no warranty of fitness. About eight months after completion it was found that there was a serious percolation of water around and through the casements in certain rooms due to defective workmanship, and I should be glad to know whether in your opinion the purchaser has a good cause of action against the vendor in respect of the defect. It is thought that this case is not exactly the same as *Lawrence* v. *Cassell*, 74 Sol. J. 421, or *Miller* v. *Cannon Hill Estates Ltd.*, 75 Sol. J. 155.

A. The case in the question is distinguishable from those cited. In the present case the house was already completed, at the date of the contract, and the absence of any warranty of fitness deprives the purchaser of any remedy. There is nothing in the present case to displace the rule *caveat emptor*.

Arrears of Storage Rent.

Q. 3334. A, in June, 1932, agreed to store for B certain household goods at a storage rent of 15s. per month. A sum of £2 10s. only has been paid on account of the storage rent. A has received notice from a money-lender that he holds a bill of sale on the goods and that the same must not be given up or moved without his consent. A has sold his premises, and it is necessary that the goods should be removed at an early date. What steps should A take to recover the arrears of storage rent and get rid of the goods?

A. There is no lien for storage rent, as the latter word is a misnomer. B is not a tenant, and the goods are therefore not subject to distraint. The holder of the bill of sale has priority over A, and this priority will not be lost, even if A obtains judgment and levies execution on the goods. A's only method of recovering the arrears is by suing B, if B has the means (apart from the goods stored) to satisfy the judgment. In order to get rid of the goods A should notify the holder of the bill of sale that he is about to vacate the premises, and that the goods should therefore be removed.

Positive Covenants — Whether Run with Land — Spurious Easements.

Q. 3335. On a conveyance of land subject to a reservation thereout of a chief rent in favour of the vendor, a company, covenants by the purchasers were entered into with th company for repair and insurance. Can these covenants be enforced by a purchaser of the chief rent? We see that Mr. Topham, in his lecture published in your number of the 23rd November last, states that positive covenants do not bind an assignee even if he has notice, but we have been advised in another connection that the benefit of a covenant which necessarily affects the value of the land runs with the land and can be enforced by the original covenantee. But it seems that on a conveyance of a chief rent this would not be so.

A. Positive covenants (broadly speaking, those involving expenditure) do not run with the land, that is to say, cannot be enforced as against an assign, being but personal obligations only (*Haywood* v. *Brunswick P. Building Society* (1881), 8 Q.B.D. 403, 401; *L. & S.W. Ry. Co.* v. *Gomm* (1882), 20 Ch. D. 562; *Austerberry* v. *Corporation of Oldham* (1885), 29 Ch. D. 750). The covenants in question seem to us to be positive. There is some authority for the proposition that a covenant to keep a fence in repair can run with the land as being in the nature of a spurious easement (*Lawrence* v. *Jenkins* (1873) L.R. 8 Q.B. 274; *Coaker* v. *Willcocks* [1911] 2 K.B. 124). Possibly (though we doubt it) this principle might extend to a general covenant to repair.

Death of one of two Joint Statutory Tenants.

Q. 3336. A is the owner of a rent-controlled house. B and C (husband and wife) are the tenants. The rental is 15s. per week. C, the wife, recently died. The husband now proposes to have his married daughter to live with him. It would appear that on the death of the husband the statutory tenancy will come to an end (*Pain* v. *Cobb* (1931), 47 T.L.R. 596; and also see s. 12 (1) (*g*), 1920 Rent Act). The landlord does not wish the statutory tenancy to be extended by the fact of the married daughter going to live with the tenant, and it would appear, having regard to the 1933 Rent Act, s. 13, that there is some danger in this. It is desired to know:—

(1) If the statutory tenancy comes to an end immediately the husband dies, notwithstanding that the married daughter may then be living with him and may have been living with him for more than six months previous to the death.

(2) Whether the fact of the married daughter living with the tenant for more than six months prior to the latter's death will have the effect of vesting a statutory tenancy in the married daughter, and so prevent such tenancy being determined on the death of the tenant.

(3) What steps, if any, should the landlord take to prevent the married daughter going to live with her father; and

(4) Generally as to the earliest date on which the landlord can take possession.

Please quote authorities.

A. It is assumed that B and C were joint statutory tenants, in which on the death of C the husband remained the sole statutory tenant. It would, therefore, appear that if on the death of the husband the daughter has resided with him for six months before his death, the right to the tenancy will pass to her (Act of 1920, s. 12 (1) (*g*), as amended by Act of 1933, s. 13). The case of *Pain* v. *Cobb* (1931), 47 T.L.R. 596, would not appear to apply, as in that case there was a sole statutory tenant. The nearest reported decision on the question appears to be a county court decision noted 77 Sol. J. 112. If no question of sub-letting arises, it does not appear that the landlord can prevent the married daughter from going to live with her father.

The Railway Fires Act.

Q. 3337. A tenant farmer client of ours has suffered loss to crops caused by sparks from a railway engine. Notice of damage and a claim was sent in, in accordance with the Railway Fires Act. Five acres of grass seed crop was destroyed. What we desire to know is what items of damage and consequential loss our client can claim? We may say that grass seeds were sown with the intention of the grass becoming a five-year ley. Can we claim: (*a*) Actual costs of seeds; (*b*) cost of labour ploughing and seeding the field thrown away; (*c*) rent of field, if so for what period; (*d*) an estimated sum for the loss of use of the crop for grazing purposes during this winter; (*e*) cost of ploughing, cultivating and re-seeding down the field.

A. It is assumed that notice has been given and particulars delivered in accordance with the Railway Fires Act (1905) Amendment Act, 1923. The farmer can claim the value of five acres of grass seed crop, which value would include the items enumerated in the question under heads (*a*), (*b*) and (*c*). The crop must have had a market price, at the date of the fire, as a growing crop, and this is the amount recoverable. Items (*d*) and (*e*), however, are too remote: see *Martin* v. *G.E.R. Co.* [1912] 2 K.B. 406, and *Attorney-General* v. *G.W.R. Co.* [1924] 2 K.B. 1.

Liabilities of Building Society.

Q. 3338. In view of the large increase in the number of building society mortgages and the wholesale building of houses which is now going on, and the consequent fall in values which is bound to take place, we are desirous of ascertaining the position of borrowing members, in the event of a building society not being able to meet its obligations. Taking the case of a building society registered under the Act of 1874, and whose shares are (*a*) preference; (*b*) subscription; (*c*) investing, and (*d*) advance, the latter, of course, being the mortgagor's shares, to what extent will the borrowing member's property be liable for the losses of the society? The rules of the society under review provide (*inter alia*) (1) a member shall terminate his membership in respect of advance shares upon payment of all principal sums due thereon, together with all other payments due by virtue of the rules; (2) preference shareholders shall not be liable for losses and shall have priority over subscription and investing shares; (3) no provision for losses of capital is made, but deficiency of profit is to be borne by all members other than preference shareholders; (4) a member may redeem his property on payment of the balance of the principal secured by the mortgage and all other money due at the date of redemption and a proportionate part of expenses and losses (if any), whether such expenses and losses be actually incurred or prospective only. Suppose the holder of twelve advance shares, representing an original advance of £600, has reduced his mortgage to £150 at the date the society has incurred heavy losses and has to be wound up, will the mortgagor be responsible for a proportion of the losses of the society to the extent of his original holding of twelve advance shares or for three advance shares, the equivalent of £150? Would this mean that, in addition to the balance required to redeem, a mortgagor may have such further sum to pay which would practically result in his re-purchasing the property?

A. The effect of r. 4 is that the mortgagor will be responsible for a proportion of the losses to the extent of his original holding and not merely for the equivalent of three advance shares. This is the effect of the decision in *Rosenberg* v. *Northumberland Building Society* (1889), 22 Q.B.D. 373. The present case is governed by that decision, rather than by the decision in *Brownlie* v. *Russell* (1883), 8 App. Cas. 235. The result is that, as suggested in the second question, a mortgagor may have such further sum to pay as would practically result in his re-purchasing the property—if the amount for which he became liable were so large. In the improbable event of a modern society being unincorporated, reference should be made to *Tosh* v. *North British Building Society* (1886), 11 App. Cas. 489. Rule 4, *supra*, has the effect of a special contract, and an advanced member is more than a debtor, so that he may be liable as a contributory. He, therefore, cannot claim the benefit of the decisions in *In re Middlesbrough etc. Building Society* (1889), 58 L.J. Ch. 771, or *In re Britannia etc. Society* (1891), 65 L.T. 196. A more detailed examination of the rules may show that an advanced member is in a better position than at first sight appears; but the quoted extracts indicate that the rules exclude the doctrine against any clog on the equity of redemption.

Costs: One Mortgage, Several Properties.

Q. 3339. We have negotiated for a borrower client an advance by another client of ours of £2,000 secured by a single mortgage on five separate properties, some of which are freehold and some leasehold. It has been necessary for us to investigate five separate titles. We are also negotiating for the same borrower client two other advances, also to be made by clients of ours, one to be secured by a single mortgage on five separate properties and the other to be secured by one mortgage on six separate properties. We should be glad of your opinion as to the manner in which our costs for the three mortgage deeds and for the various investigations of title should be calculated.

A. The negotiations appear to have been conducted on behalf of the borrower, so that the borrower's solicitors' scale fee prescribed by Part I of Sched. I of the General Order, 1882, as amended by the General Order, 1925, applies in each instance. The custom (which has the approval of the Law Society) in a case such as this is to calculate the negotiating fee on the aggregate amount advanced on each mortgage and not on the separate advances on each property. If, of course, instructions were first received from the proposed lender to find a borrower for his money, then the solicitor would charge the negotiating fee on the mortgagee's scale, but it is the opinion of the Council of the Law Society that a solicitor cannot charge both the mortgagor and the mortgagee with a negotiating fee, notwithstanding r. 3 of the Rules applicable to Part I, Sched. I (see the opinion published in the "Gazette" of November 1926). The practice with regard to the deducing fee is to charge this for each mortgage on the aggregate amount advanced and not on the separate titles investigated. This practice again has the approval of the Law Society. Election to charge under Sched. II may, of course, be given under r. 6 before the business is undertaken if the solicitor does not think that the scale remuneration under Sched. I will be sufficiently remunerative.

To-day and Yesterday.

LEGAL CALENDAR.

22 JUNE.—On the 22nd June, 1836, there came on in the Common Pleas the action for crim. con. brought by The Hon. George Norton against Lord Melbourne, then Prime Minister. The Hon. Mrs. Norton was beautiful, brilliant and notoriously unsuited to her husband, and Melbourne was known not to be strict in his morals. The case was watched by the Tories with the most eager anticipation. The hearing lasted all day in a court so packed that the police could hardly force admission for the defendant's counsel. The plaintiff's case was weak, and certain letters on which he relied were so irrelevant that they inspired Dickens to parody them in the "chops and tomato sauce" correspondence in "Pickwick." The shout of applause which greeted the verdict for Melbourne was heard in the House of Commons.

23 JUNE.—It was an unfortunate day for Henry Payn when he made the acquaintance of a gentleman calling himself William O'Brien Fitzgerald, who went abroad shortly afterwards. Subsequently, a letter arrived from Pau. In it his friend said that he was in prison there for debt with his wife, a relative of the Dukes of Norfolk and Leinster, and entitled to vast wealth, that his London agent had not sent an expected remittance, that the honour of more than one noble family demanded secrecy and that in exchange for help they would give him the lucrative post of their solicitor. Nothing of this was true but the imprisonment, but poor Mr. Payn hurried to Pau and spent hundreds of pounds in securing their release. Later when the trick was discovered, the alleged scion of noble houses was awarded seven years' transportation at Dover Sessions on the 23rd June, 1852.

24 JUNE.—On the 24th June, 1859, Sir Alexander Cockburn, Chief Justice of the Common Pleas, succeeded Lord Campbell as Chief Justice of the King's Bench. He was a good judge, though not a great one, popular because it was felt that he had achieved his position without backstairs influence or political intrigue, and because, even when he had to rebuke, he tempered authority with gentleness.

25 JUNE.—On the 25th June, 1823, the case of *Thurtell* v. *Beaumont* was heard before Park, J. The plaintiff was the notorious rascal who soon afterwards committed the murder which brought him to the gallows, and his claim was in respect of a fraudulent fire insurance effected simply with a view to arson. Unfortunately for the insurance company, their counsel, Serjeant Taddy, a pleader of the Buzfuz type, alienated the judge by an altercation in which he got the better of him. Park, in revenge, summed up dead against them and Thurtell got a verdict. Afterwards, however, a rule *nisi* for a new trial was granted.

26 JUNE.—On the 26th June, 1822, the great Princess of Cumberland hoax finished its first stage when Sir John Nichol decided that the Prerogative Court had no jurisdiction to deal with the question of the probate of an alleged will of King George III. The claimant called herself the Princess Olive, saying she was the daughter of the late King's brother by a secret marriage. It is a pity that the case was not settled then and there, for it dragged on for over forty years more, and when at last it came to trial it was found that the eighty-two documents relied on in support of the claim, including the will, were impudent forgeries.

27 JUNE.—On the 27th June, 1788, John Scott, afterwards Lord Chancellor Eldon, became Solicitor-General. He told the King that by this step he expected to lose £2,000 a year, complaining particularly that the cases for opinion sent by the solicitors of the public offices were only marked three guineas, whereas in private matters the fee might be from ten to twenty. The King's comment was: "For the first time I comprehend what I could never before understand, why it has always been so difficult to get any opinions from my law officers."

28 JUNE.—On the 28th June, 1866, Sir Maziere Brady sat for the last time as Chancellor in the Irish Court of Chancery.

THE WEEK'S PERSONALITY.

It was fitting that Sir Maziere Brady, a member of the noble and once powerful family of O'Brady, descended from the ancient Kings of Ireland, should have sat as a judge for over twenty-five years. In 1840 he became Chief Baron of the Exchequer in Ireland and in that office his judgments proved him a painstaking, astute and learned reasoner, expeditious without undue haste. He loved the bustle of the circuits, the wit of the Bar, the drollery of the Irish witnesses. One story which he always delighted to tell related to a prisoner charged before him at Clonmel with robbing the mail. When asked whether he was guilty or not guilty, he replied: "How can I tell that, your lordship, till I am tried?" Much to his own astonishment he was acquitted. In 1846, Brady somewhat reluctantly accepted promotion to the Irish Chancellorship, an office which he retained with one short interval for twenty years. Hard work and an honest discharge of his duty were his mottoes. Affable, courteous and always approachable, he never put on an affected superiority or a pompous dignity. His firmness of purpose, strong common sense and sincerity in friendship made him everywhere beloved.

WHEN JUSTICE NODS.

At Oldham Police Court recently the chairman protested that one of his colleagues on the bench was asleep, whereupon the magistrate referred to retorted that because he leant back it did not mean that he was asleep. There was some further altercation in the course of which the chairman declared that he was snoring. The incident recalls a story which the late Mr. Justice Alpers, of New Zealand, used to tell. Once he was arguing a case at the Bar, and noticing symptoms of somnolence in the magistrate, whispered to his opponent: "The damned beak's asleep." "Yes?" said the magistrate suddenly, his eyes wide open, "I am afraid I didn't quite catch your last sentence." Alpers continued his argument much confused. That evening the magistrate, having beaten Alpers thoroughly at bridge, said: "I hope you have found the damned beak wide awake enough for you this evening. As a matter of fact, you did send me to sleep in court to-day, but when you are annoyed—and you were annoyed this afternoon, you know—you whisper like a megaphone."

THE SHADOW OF THE GUN.

A man was recently shot and wounded in the hand a few hours before he was to have given evidence at the Berkshire Quarter Sessions. The chairman was informed by the police that witnesses were being intimidated and that the shooting was the culmination of a series of incidents. It is a pity he was not in a position to deal with the terrorists as suddenly as Sir Chartres Biron, when he was magistrate at Hoxton, dealt with a dangerous gang there. Two men who had appeared before him in connection with a street disturbance asked for police protection on the ground that armed men were waiting outside to murder them. Affecting to disbelieve them, he called the police inspector to his private room and assured himself that there really was a mob armed with revolvers waiting to murder the two men. Then he gave orders to telephone to Scotland Yard for an overwhelming force of armed police. At five o'clock, it was announced that they had arrived. Two hooded vans had blocked the approaches to the court. The threatened men were sent forth. Shots rang out instantly from the gang. Then the police closed in and soon all the would-be murderers were on their way to trial and sentence. It happened in London.

Reviews.

The Law of Running-down Cases. By EDWARD TERRELL, of Gray's Inn and the Middle Temple, Barrister-at-Law. Recorder of Newbury. Second Edition, 1936. Demy 8vo. pp. xxix and (with Index) 388. London: Butterworth and Co. (Publishers), Limited. 30s. net.

The great increase in the amount of traffic on the roads has led to considerable changes in the law since the first edition of this work was published. The new Highway Code also has been adopted which, although it has not the direct force of law, yet at the same time has been accepted in civil and criminal proceedings as indicative of many phases of conduct on the highway and is indirectly of substantial importance to the adviser or advocate dealing with what are euphemistically called running-down cases. The Road Traffic Act, 1934, as the learned author observes, has made an effort to patch up the gaps in the Compulsory Insurance Provisions of the Road Traffic Act, 1930; but the Third Parties (Rights against Insurers) Act, 1930, has also appeared and seems to indicate the need for a proper codification of the whole law on the subject. These matters and incidental legislation such as the Law Reform (Miscellaneous Provisions) Act, 1934, and the Law Reform (Married Women and Tortfeasors) Act, 1935, have been duly considered by the author and his conclusions as to their bearing upon the subject have been carefully set forth in a volume which bears evidence of careful preparation, embodies all necessary statutory and other official matter, with a well-arranged index, making a book which should meet with approbation in both branches of the legal profession.

Questions in Mercantile Law, with Notes of Answers. By W. J. WESTON, M.A., B.Sc., of Gray's Inn, Barrister-at-Law. 1936. Demy 8vo. pp. vii and 94. London: Sir Isaac Pitman and Sons, Ltd. 2s. 6d. net.

This is issued as a companion volume to "Slater's Mercantile Law." The questions are mainly collected from papers set by bodies examining in mercantile law, including London University, The Institute of Chartered Accountants, The Society of Incorporated Accountants, The Chartered Institute of Secretaries, The London Chamber of Commerce and other important professional societies. The answers give the maximum of clear information in the minimum of space and provide a perfect model for students as well as a useful basis for revision. We can thoroughly recommend this excellent and much-needed work.

Compulsory Acquisition of Land and Compensation. By ROBERT ABERCROMBY GORDON, M.A., LL.M., K.C., a Bencher of the Inner Temple and a Member of the South Eastern Circuit, Recorder of Margate. Second Edition. 1936. Demy 8vo. pp. xx and (with Index) 367. London: Stevens & Sons, Ltd. 12s. 6d. net.

This volume is not concerned merely with the purchase of land by public authorities, but deals also with compulsory acquisition by statutory companies and bodies of persons carrying on business for profit or gain acting under Parliamentary powers. The learned author distinguishes between these cases and cases where land is acquired compulsorily by a Government department or a local or public authority, and deals with each of these two classes separately, both in regard to the procedure for acquisition and also with the principles under which compensation is awarded afterwards. Since the first edition of this work was published in 1929, many new statutes have been passed particularly dealing with housing and planning. These have been embodied by the learned author in the present edition. A number of private Acts, such as the London Passenger Transport Act, 1934, the various railway Acts, and the Camborne Water Act, 1935, are reviewed. No material change has been made in the arrangement of the work, but several chapters have been re-written and an interesting chapter has been added dealing with decisions by the Minister of Health on questions brought before him on appeal from the decisions of local authorities. An enlarged table of cases and an excellent index add to the usefulness of this book, wherein will also be found some typical compensation cases and Appendices of the various Statutory Rules and Orders in force.

Books Received.

Trial of Robert Wood (the Camden Town Case). Edited by BASIL HOGARTH. 1936. Demy 8vo. pp. vii and 268. London and Edinburgh: William Hodge & Co., Ltd. 10s. 6d. net.

The Four Dead Men. By SPENCER SIMPSON. 1936. Crown 8vo. pp. 284. London: Methuen & Co. Ltd. 7s. 6d. net.

Londoner's New York. By E. STEWART FAY. 1936. Crown 8vo. pp. 235 (with Index, Glossary, 24 Plates and End-paper Maps). London: Methuen & Co. Ltd. 8s. 6d. net

The Secretary's Manual on the Law and Practice of Joint Stock Companies. Twenty-third edition. 1936. By His Honour Judge HAYDON, M.A., K.C., and Sir NICHOLAS WATERHOUSE, K.B.E., F.C.A. Demy 8vo. pp. xxxi and (with Index) 523. London: Jordan & Sons, Ltd. 10s. net.

Annual Survey of English Law, 1935. By The London School of Economics and Political Science (University of London) Department of Law. 1936. Medium 8vo. pp. xxxiii and (with Index) 355. London: Sweet and Maxwell, Limited. 10s. 6d. net.

Chronological Table and Index of the Statutes to 31st December, 1935. Fifty-first edition, 1936. In two volumes. Royal 8vo. Vol. I, Chronological Table of all the Statutes. pp. x and 750. Vol. II, Index to the Statutes in Force, pp. iv and 2057. London: H.M. Stationery Office. £1 5s. net for two volumes (not sold separately).

Outline of the Law of Contracts and Torts for the Use of Students. By A. M. WILSHERE, M.A., LL.B., of Gray's Inn, Barrister-at-Law, and DOUGLAS ROBB, B.A., of the Inner Temple, Barrister-at-Law. Fourth edition, 1936. By A. M. WILSHERE. Demy 8vo. pp. xv and 161. London: Sweet & Maxwell, Limited 7s. 6d. net.

[All books acknowledged or reviewed can be obtained through The Solicitors' Law Stationery Society, Limited, London, Liverpool and Birmingham.]

Correspondence.

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL.]

Hire-purchase Agreements.

Sir,—From my experience as a general practitioner in a large industrial town and also as one who conducts a poor persons' advice bureau, I can confirm the iniquitous and growing practice referred to by Mr. Chorlton in the question which he asked in the House of Commons on the 28th ult., and which you printed in your issue of the 6th inst.

In one case, in which I was recently concerned, a county court judge admitted the difficulty referred to by the Attorney-General in his answer to Mr. Chorlton, and said that he would like to see an Act passed whereby a hire-purchase agreement, obtained by a house to house salesman, should not be enforceable against the purchaser unless his signature had been witnessed by a commissioner for oaths who certified that the contents had been explained to him.

E. H. TAYLOR.

Rochdale.
22nd June.

Notes of Cases.

Judicial Committee of the Privy Council.

Bracia Czeczowiczka *v.* **Markus; Same** *v.* **Loy.**

Lord Atkin, Lord Alness and Lord Maugham.
5th March, 1936.

KENYA—BANKRUPTCY—CLAIMS BY DEBTOR AGAINST GERMAN GOVERNMENT—CLAIMS ATTACHED IN GERMANY BY CREDITORS—BANKRUPTCY NOTICES SERVED ON DEBTOR AT INSTANCE OF CREDITOR—VALIDITY—EXECUTION—RECEIVING ORDER—COMMITTAL—JURISDICTION.

Four consolidated appeals from orders of the Court of Appeal for Eastern Africa reversing orders of the Supreme Court of Kenya, and setting aside respectively (*a*) two bankruptcy notices served on the respondents, Markus and Loy, and (*b*) a receiving order in bankruptcy made against the respondents.

The appellants, the creditors, were a Polish firm. Before the Great War, they sold certain cotton goods of the value of £4,832 to the respondents, an Austrian firm trading in East Africa. The period of credit granted to the respondent debtors was still running when the War broke out. The debtors, being enemy nationals, were interned, their African business and property being lost. After the War they became Czechoslovakian nationals, and had a claim against the German Government in respect of the loss of their business and property. In 1924, the debtors returned to East Africa, and re-established their business there. In that year, the appellant creditors sued them in Vienna and obtained judgment against them for the £4,832 with interest. In 1925, the respondents obtained an award from the Mixed German Czechoslovakian Arbitral Tribunal against the German State for a large sum in respect of their various losses. In that year, the appellant creditors obtained from the Berlin Landesgericht an attachment on the "alleged debtors' claim against the Reich Settling Office" to the extent of £4,832. The attachment prohibited the Reich Settling Office from paying the debtors, and the debtors from "encashing" their claim. In 1932 the creditors obtained in Berlin, in respect of a claim for interest, a further attachment "of the alleged claims of the debtors against the German State . . . in respect to compensation regarding the judgment of . . . 1925, of the Mixed German Czechoslovakian Arbitral Tribunal . . ." In 1929, the creditors brought an action in Kenya against the debtors for £4,832 and interest. Alternatively, they claimed on the Viennese judgment. In 1932 they obtained a decree in the Supreme Court of Kenya for the amount claimed. In 1933, the creditors caused the debtors to be served with two bankruptcy notices in pursuance of the Kenya Bankruptcy Ordinance, 1930, s. 3 (1) (*g*), which is in terms similar to those of the corresponding English provision. The debtors applied to have the notices set aside on the ground that the creditors by obtaining the attachment orders in Germany had prevented the debtors from complying with the notices. The application having been refused, the Court of Appeal for Eastern Africa made an order allowing the appeal and set aside the notices.

LORD ATKIN, giving the judgment of the Board, said that the Court of Appeal had applied the principle stated by Lord Esher in *Re Sedgwick* (1888), 60 L.T. 9, and held that the creditors who, by virtue of the attachment orders, alone could claim the amount alleged by the debtors to be due to them from the German Government, had not resorted to the Berlin courts and that, until that course had been proved unavailing, the respondents had not proved that it was the German Government, and not themselves, who were preventing payment of the sum in question. On appeal to the Board, their lordships had allowed further evidence to be adduced before them as to German law and the effect of the attachments. If the facts had been as fully disclosed before the Court of Appeal as they had been to the Board, the order now appealed from would never have been made. The debtors themselves had at no time been prevented by the attachment orders from pursuing what remedies they had against the German Government. The inability of the debtors to obtain execution against the German Government was due to the refusal of the German Government agent attached to the Mixed Arbitral Tribunal to produce a certified copy of the tribunal's award in the debtors' favour. That refusal was upheld by the Kammergericht, the highest Court of Appeal, as being within the powers of the agent as "custodian of the interests of the German State." The debtors had to prove affirmatively that the claim in respect of which the bankruptcy notices were issued could and would have been paid but for some act or omission on the part of the creditor. There was no evidence that there were available at any time any proceedings which would have resulted in the German Government's paying the debt, or, consequently, that the creditors' act in obtaining the attachment orders, or any omission of theirs since then, was the cause of the debtors' inability to pay. The first two appeals must, therefore, be allowed, and the bankruptcy notices must stand.

The second two appeals arose out of the decree obtained by the appellant creditors against the debtors from the Supreme Court of Kenya. In Kenya the procedure in execution followed the Indian Code, and not the English, and imprisonment of the debtor was a normal form of execution. In October, 1933, the creditors gave due notice that they would apply for execution by imprisonment of the debtors. When the debtors were examined as to their means, it appeared that they had transferred their assets to a private limited company from which they were receiving £750 a year as directors. It was contended that the court could only make a receiving order where it could make a committal order, and that, under Ord. XIX, r. 37 (Kenya), it could not make a committal order where the debtor was unable, from poverty, or other sufficient cause, to pay the judgment debt. The power to commit, however, as the judge had pointed out, was not given by r. 37. That rule merely gave a discretion not to commit after certain specified considerations had been taken into account. The judge, however, decided to act under the Bankruptcy Ordinance, 1930, s. 99, and made a receiving order instead of committing as he was in a position to do. On appeal, the Court of Appeal set aside the receiving order. Their lordships had difficulty in appreciating the court's reasons for its decision. The court appeared to have thought that imprisonment for debt in Kenya depended on enactments similar to the English Debtors Act, 1890. The learned judges had omitted to notice that, whereas the Debtors Act abolished imprisonment for debt except in special cases, the Kenya Ordinance and rules imposed it as one of the ordinary means of execution. Rule 37 merely gave a discretion not to commit, the jurisdiction to do so having been given by the Civil Procedure Ordinance and the rules made under it. The appeals must be allowed, and the receiving order remained effective.

COUNSEL: *Cyril Asquith*, for the appellants; *F. P. M. Schiller*, K.C., and *Ronald Smith*, for the respondents.

SOLICITORS: *Linklaters & Paines; Birkbeck, Julius, Edwards and Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Payne *v.* **Deputy Federal Commissioner of Taxation.**

Lord Hailsham, L.C., Lord Russell of Killowen, Lord Wright, M.R., Sir Isaac Isaacs, and Sir George Rankin, 23rd June, 1936.

AUSTRALIA—REVENUE—INCOME TAX—INTEREST RECEIVED BY AUSTRALIAN ON STOCK IN ENGLAND—WHETHER ASSESSABLE ON THE VALUE OF THAT SUM IN AUSTRALIAN CURRENCY—INCOME TAX ASSESSMENT ACT, 1922–31, s. 4; INCOME TAX ACT, 1931 (No. 24), ss. 3, 60.

Appeal from two judgments of the High Court of Australia, one dated 30th April, 1934, given by the full High Court

answering certain questions on a case stated by Dixon, J., the other, dated 9th May, 1934, given by Dixon, J., dismissing, pursuant to those answers, the appellant's appeal against his assessment for Federal income tax for the year 1931–32, made under statutes of the Commonwealth of Australia.

The appellant, a resident in Melbourne, Victoria, returned his gross income for the purpose of Federal income tax at £20,173, and included in it the sum of £5,671 as interest on British Funded Stock, that sum having been received by him by credits to his account with the Union Bank of Australia, Limited, in London, and retained in England. From his gross income he claimed certain deductions, returning his net income at £14,831. The assessing officer added to the total amount so returned a sum of £1,097, representing the difference between the £5,671 and the sum which would be produced in Australian currency in Melbourne by the telegraphic transfer on the respective dates of credit of the sums constituting the £5,671. The appellant objected that the £5,671 should not be included at any other figure. His objections were disallowed, and thereupon, under the provisions of the Commonwealth Income Tax Assessment Act, 1922-32, were treated as an appeal, and the matter was transmitted to the High Court of Australia for hearing.

Lord Russell of Killowen, giving the judgment of the Board, said that when the case came before them on a case stated by Dixon, J., the judges of the High Court were divided in opinion. Gavan Duffy, C.J., and Evatt and McTiernan, JJ., were of opinion that the assessment was correctly made. Rich, Starke and Dixon, JJ., were of the contrary opinion, relying largely, as it appeared to their lordships, on a decision of the House of Lords in *Adelaide Electric Supply Co. Ltd.* v. *Prudential Assurance Co. Ltd.* [1934] A.C. 122. By virtue of s. 23 of the Commonwealth Judiciary Act, the opinion of the Chief Justice prevailed and the appeal was dismissed. The question appeared to depend on the true meaning and construction of the Income Tax and Income Tax Assessment Acts of the Commonwealth of Australia. By the Income Tax Assessment Act, 1922-31, s. 4, "assessable income," meant, in the case of a resident, the gross income derived from all sources whether in Australia or elsewhere, and "taxable income" meant the amount of income remaining after all deductions allowed by the Act had been made. The tax was imposed by ss. 3 and 6 of the Income Tax Act, 1931 (No. 24 of 1931) (the Taxing Act). In every case the amount payable was ascertained by reference to a rate based on a calculation of pence per pound. There could be no doubt that those Australian Acts, in referring to pounds and pence, were referring to those units of Australian currency known as pounds and pence respectively, and to nothing else. The income tax payable by a taxpayer to the Australian revenue was to be fixed by means of a calculation which involved the multiplication of an ascertained number of one kind of units of Australian currency by the scheduled number of another kind of units of Australian currency, the product being the resultant number of Australian pence. It seemed necessarily to follow that, to enable that calculation to be made, the assessable income of the taxpayer must, whatever the currency in which he derived it, all be expressed in terms of Australian currency. Their lordships were unable to agree that the *Adelaide Electric Supply Case, supra,* was inconsistent with that view. The view was also expressed in that case, by three of the lords taking part in the debate, that the unit of account symbolised by the £, and originally carried by the early settlers from England to Australia, had never been changed, but had remained the same as a measure of obligation, though the discharge of the obligation so measured might be affected by fluctuations in the currency which was legal tender *in loco solutionis.* Their lordships were unable to see anything in that view which would justify, still less necessitate, a construction of the Assessment Act and the Taxing Act other than that which they had indicated above. Their lordships were accordingly of opinion that the appeals should be dismissed.

Counsel: *Sir William Jowitt,* K.C., and *J. H. Bowe,* for the appellant; *Gavin Simonds,* K.C., and *Wilfrid Barton,* for the respondent.

Solicitors: *Burton, Yeates & Hart; Coward, Chance & Co.*

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

Court of Appeal.

William Cory & Son *v.* Dorman Long.

Slesser and Romer, L.JJ., and Finlay, J.
4th May, 1936.

Shipping—Collision—Liability for Damage—Limitation—Ownership of Ship—Whether Party Responsible Charterer by Demise—Merchant Shipping Acts, 1894 to 1921.

Appeal from a decision of Branson, J.

The plaintiff company carried on besides their business as coal merchants a lighterage business prior to 1916, when they caused to be incorporated a new company, Cory Lighterage, Ltd., who became owners of all their barges. All their servants became the servants of the new company, which carried on business as a separate entity. In 1917 the management of the lighterage company was decided to be transferred to the plaintiff company, the lighterage company nevertheless remaining the registered owners of the fleet of barges. In 1927 trading in the name of the lighterage company ceased, trading being carried on in the name of the plaintiff company, but all the profits which accrued from trading transactions were accounted for in the books of the lighterage company, and all the expenses, such as wages, were accounted for as debits in their books. In 1933 the defendant company, being engaged in certain engineering works in connection with a dock, constructed a cofferdam. The plaintiff company contracted to supply barges to take away the soil. One of the barges, owing to the bargee's negligence, collided with the cofferdam and caused damage. In an action by the present defendants against the present plaintiffs and the lighterage company, the learned judge held that the negligent bargee was the servant of the present plaintiffs, against whom he gave judgment, dismissing the lighterage company from the action. In the present action the plaintiff company claimed to limit their liability under the Merchant Shipping Acts, 1894–1921. Branson, J., held that they were not entitled to this limitation. They now appealed.

Slesser, L.J., dismissing the appeal, said that the limitation applied only in cases where the material section was satisfied and referred to the Merchant Shipping Act, 1894, s. 503 (1) (ii), the Merchant Shipping (Liability of Shipowners and Others) Act, 1900, s. 1, the Merchant Shipping Act, 1906, s. 71, and the Merchant Shipping Act, 1921, s. 1 (2). The learned judge had held that the plaintiffs had not brought themselves within the definitions of the Acts of 1894, 1906 and 1921. They claimed that they were either "owners" within s. 503 of the Act of 1894 or charterers to whom the ship was demised within s. 71 of the Act of 1906. *Baumwoll Manufactur von Carl Scheibler* v. *Christopher Furness* [1893] A.C. 8, and *Sir John Jackson, Ltd.* v. *Owners of the Steamship "Blanche"* [1908] A.C. 126, at pp. 130 and 136, had been cited. There was no document in writing which could be said to be in the nature of a charter. It had been said in *Lidgett* v. *Williams,* 14 L.J. Ch. 459, that the rights in a ship could be transferred by charter orally. His lordship wished to leave that matter open, but felt the gravest doubt whether it was possible to transfer property by a charter where there was no instrument of any kind, and whether a person contracting orally for carriage of goods by sea could be called a charterer. Here, however, there was nothing to constitute transference of the ownership of the ship either by charter-party in writing or orally. It had been argued that the

plaintiffs controlled and navigated this barge, and that that was enough for the present purpose. But this was not so. They were not principals but agents for the lighterage company, which were at all material times still receiving the profits of this and similar contracts, and were being made liable for the debts and the like. The lighterage company were still the owners of the barge for all relevant purposes.

ROMER, L.J., and FINLAY, J., agreed.

COUNSEL: *Carpmael*, K.C., and *E. Addis*; *Noad*, K.C., *W. McNair* and *Cyril Roberts*.

SOLICITORS: *William Charles Crocker*; *Hair & Co.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Mason & Wood Ltd. *v.* **Greene.**

Slesser and Romer, L.JJ., and Finlay, J.
14th May, 1936.

MONEYLENDER—LOAN—PROMISSORY NOTE—MEMORANDUM—AMOUNT OF INTEREST—STATEMENT—NO STATEMENT THAT IT WAS IN ACCORDANCE WITH SCHED. I—MONEYLENDERS ACT, 1927 (17 & 18 Geo. 5, c. 21), s. 6 (2).

Appeal from a decision of Macnaghten, J.

A firm of licensed money lenders were assignees for value of two joint and several promissory notes given to other registered money lenders by the defendants as part of a money-lending transaction. The notes, which were dated respectively the 26th August, 1933, and the 12th January, 1934, were each for £70, payable by monthly instalments of £5. In each case the memorandum of the contract stated: "The amount of principal being advanced in respect of the said promissory note for £70 is £50 and the interest charged of £20 is equivalent to interest at the rate of £64 per cent. per annum." The defendants having made default in paying the instalments, the money lenders sued to recover the balance of the principal and interest. The defence was set up that the Moneylenders Act, 1927, s. 6 (2), had not been complied with, as the memorandum failed to state that the rate of interest had been calculated in accordance with Sched. I of the Act. Macnaghten, J., gave judgment for the plaintiff.

SLESSER, L.J., allowing the defendants' appeal, said that the case was governed by *Parkfield Trust Ltd.* v. *Curtis* [1934] 1 K.B. 395.

ROMER, L.JJ., and FINLAY, J., agreed.

COUNSEL: *G. Newman*; *R. Levy*.

SOLICITORS: *Philip Goodenday & Co.*, agents for *Alfred Bieber & Bieber*, of Liverpool; *Lipton & Jefferies*.

[Reported by FRANCIS W. COWPER, Esq., Barrister-at-Law.]

Cooper *v.* **Cooper.**

Lord Wright, M.R., Slesser and Romer, L.JJ.
27th May, 1936.

DIVORCE—PRACTICE—PETITIONER'S APPLICATION FOR SPECIAL JURY—REGISTRAR'S ORDER—REVERSED BY JUDGE—DISCRETION—MATRIMONIAL CAUSES RULES, r. 30 (*b*), R.S.C. Ord. LIV, r. 12.

Appeal from a decision of Merriman, P.

In December, 1934, a wife petitioned for a divorce, alleging her husband's adultery with a named person in India, subsequently amending her petition so as to add a charge of adultery with an unnamed person in England. The husband denied the charges and cross-petitioned for a divorce, alleging his wife's adultery with one W. The petitioner having applied for trial of the proceedings before a special jury, the Registrar so ordered, but on the respondent's appeal the President directed that the case should be tried by a judge alone. The petitioner and W appealed. At the hearing of the appeal, the charge of adultery in India was abandoned.

LORD WRIGHT, M.R., dismissing the appeal, said that a petitioner had no absolute right to have a petition for divorce tried by a jury (*Rugg-Gunn* v. *Rugg-Gunn* [1931] P. 147, Matrimonial Causes Rules, r. 30 (*b*); "Rayden & Mortimer on Divorce," 3rd ed., p. 549). Here the only issue being whether adultery had been committed, and no damages being claimed, the case came within the direction that unless the Registrar otherwise ordered the trial should be without a jury. The question was as to the meaning of "unless the Registrar shall otherwise order" in r. 30 (*b*), whether the Registrar's decision, though subject to an appeal to the judge, was binding on him unless it appeared that he had not exercised his discretion judiciously, or whether on appeal the whole matter was subject to the judge's discretion. On the latter view, the court could not interfere with the President's decision unless it could be shown that he had not exercised his discretion judicially, but on the former view the Registrar's decision was *primâ facie* binding. His lordship held that the substantive decision was that of the President (see R.S.C. Ord. LIV, r. 12). A Master in the King's Bench Division and a Registrar in the Divorce Division were on the same footing. On appeal from a judge who had reversed a Master's decision, the substantial discretion was treated as that of the judge. The same rule must be inferred where a Registrar was concerned.

SLESSER and ROMER, L.JJ., agreed.

COUNSEL: *Oliver*, K.C., and *R. B. James*; *Birkett*, K.C., and *H. C. Mortimer*.

SOLICITORS: *Withers & Co.*; *G. H. Drury*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—Chancery Division.

***In re* Spollen and Long's Contract.**

Luxmoore, J. 24th and 27th April and 28th May, 1936.

VENDOR AND PURCHASER—ABSTRACT OF TITLE—REQUISITIONS—EARLIER ASSIGNMENT OF LEASE—CONSIDERATION NOT CORRESPONDING WITH STAMP—WHETHER GOOD TITLE MADE OUT.

On the 13th September, 1935, S agreed to sell to L who agreed to purchase certain leasehold property for the unexpired portion of a term of sixty-eight years from the 24th June, 1899, at a ground rent of £9 a year. The purchase price was £190, and £10 was paid as deposit. An abstract of title having been delivered by the vendor's solicitors, the purchaser's solicitors sent in the requisitions on title and submitted a draft assignment, expressed to be subject to the requisitions on title. The first requisition raised the point that according to the abstract the stamp on an assignment of the 2nd July, 1912, was 2s. 6d. and that, assuming the abstract was correctly marked, this stamp was insufficient as the consideration was £75 12s. 6d. In the course of correspondence, the vendor's solicitors sent to the purchaser's solicitors a letter from a partner in another firm of solicitors who had acted for the purchaser under the assignment in question. The letter stated evidence in the possession of his firm according to which the consideration paid was in fact £22 12s. 6d. The writer said that the deed was evidently engrossed by a law stationer and that no alteration had been made in it, save that a superfluous word had been struck out and initialled by him. The purchaser's solicitors wrote to the vendor's solicitors on the 31st October that they were not prepared to advise their client to accept a title involving the acceptance of a deed either incorrectly stamped or which had been altered since execution. On the 7th November the vendor's solicitors wrote that it was obvious that after execution the deed had been altered, by whom and for what purpose there were no means of finding out, but that the alteration did not vitiate the title, and that a good and marketable title had been shown. By this summons, the vendor asked for a declaration that the requisitions had been sufficiently answered and a good title made.

LUXMOORE, J., in giving judgment, said that the requisition was a proper one. The contention in the letter of the 7th November was incorrect. It was plain that there had

been an alteration in the consideration, and, in the absence of evidence to the contrary, there was a presumption that the alteration had been made before execution (see *Doe* v. *Catomore*, 16 Q.B. 745, at p. 746). Thus, apart from other proof, this would appear to be a proper deed insufficiently stamped. The vendor wished to displace this *primâ facie* presumption. This purchaser having contracted on an open contract was entitled to a good marketable title, that was one enabling him to sell the property without making special conditions of sale restrictive of the purchaser's rights. The proper stamping of a document was an important matter of title, because, if an owner had to defend his right or attack a wrongdoer with regard to the property, it was necessary for him to be able to produce his title deeds in evidence without further trouble. If a document appeared to be improperly stamped, he would either have to pay a penalty or prove that there had been some alteration made. The purchaser had a right to have every title deed in a state in which it would be available. In the course of the correspondence, the vendor's solicitor had suggested that the purchaser should accept the title if the solicitor for the purchaser under the assignment in question made a statutory declaration in support of the facts he had stated, but on an open contract a vendor could not insist on a purchaser accepting a statutory declaration or other evidence put forward to contradict something which from the abstract appeared to be *primâ facie* the state of things existing. There were cases where the vendor could force the purchaser to accept a statutory declaration, e.g., with regard to facts appearing in the abstract which supported the evidence afforded by the abstract or where title deeds were lost. *In re Halifax Commercial Banking Co. and Wood*, 79 L.T. 536, was not relevant to the present case which was totally different, because this vendor was selling under an open contract. It would not be right to compel a purchaser, purchasing on an open contract, to take a title of that kind, since he could not properly or prudently resell the property on an open contract. The vendor had not properly answered the requisition. His lordship also dealt with a further requisition which asked what was the amount of the stamp duty on another abstracted assignment, and held that it was the vendor's duty to obtain production of the document or else the information required, though it might be that the purchaser would have had to pay the costs incurred by the vendor in complying with his requirement.

COUNSEL: *G. P. Slade; Morton*, K.C., and *W. G. Cook*.

SOLICITORS: *Sharpe, Pritchard & Co.*, agents for *Howard Cant & Cheatle*, of Birmingham; *Douglas Fearn & Co.*, agents for *V. Geoffrey Parker*, of Birmingham.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

In re Bracey: Hull *v.* Johns.

Clauson, J. 27th May, 1936.

ADMINISTRATION—TESTATOR'S BUSINESS—CARRIED ON BY EXECUTORS—POWER UNDER WILL—DEBTS INCURRED—PAID BY EXECUTOR PERSONALLY—ADMINISTRATION ORDER—INDEMNITY—INTEREST—R.S.C. Ord. LV, rr. 62, 63.

A testator died in 1925, leaving a will which gave his executors power to carry on his business. In August, 1927, an order for general administration was made in an administration action and a receiver was appointed. In 1933 the court ordered the business to be sold, and under that order the testator's outstanding debts were paid. In carrying on the business, the executors had incurred certain debts, and the question arose whether interest was payable on them, and, if so, from what date. Further, one of the executors having discharged some of these debts out of his own moneys, the question arose whether he was entitled to an indemnity with interest. In no case was there any special agreement for interest on the debts.

CLAUSON, J., in giving judgment, said that the debts should be paid with interest at 4 per cent. only as from the date of the Master's certificate in the action. Order LV, rr. 62 and 63, applied only to debts of the testator (*In re Dietz; Hodgson* v. *Dietz*, unreported, but noted in the "Annual Practice," 1936, p. 1189.) No doubt was thrown on the practice followed in *In re Frith* [1902] 1 Ch. 342.

COUNSEL: *J. A. Mackintosh: Morton*, K.C., and *Lloyd-Williams; Sir Gerald Hurst*, K.C., and *Roger Turnbull; Winterbotham; McQueen*.

SOLICITORS: *Botterell & Roche*, agents for *Chamberlin, Talbot & Bracey*, of Great Yarmouth; *Smith & Hudson*, agents for *Wiltshire, Sons & Jordan*, of Great Yarmouth; *Peacock & Goddard*, agents for *Hill & Perks*, of Norwich; *Official Solicitor*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Carter (Inspector of Taxes) *v.* Sharon.

Lawrence, J. 19th March, 1936.

REVENUE—INCOME TAX—INCOME ARISING FROM SHARES IN AMERICA AND RECEIVED BY TAXPAYER IN ENGLAND—ASSESSMENT—INCOME FIRST ARISING—WHETHER TO BE WITH REFERENCE TO YEAR PRECEDING YEAR OF ASSESSMENT—ALLOWANCE TO TAXPAYER'S DAUGHTER IN ENGLAND—GIFT COMPLETE AND IRREVOCABLE IN AMERICA—WHETHER TAXPAYER ASSESSABLE IN RESPECT OF—FINANCE ACT, 1926 (16 & 17 Geo. 5, c. 22), s. 29 (1)—INCOME TAX ACT, 1918 (8 & 9 Geo. 5, c. 40), Sch. D, Case V.

Appeal by the Crown against a decision of the Commissioners for the Special Purposes of the Income Tax reducing to £820 an assessment of £9,840 in respect of the respondent's income for the year ended the 5th April, 1929, and discharging an additional assessment of £816 made on the respondent for the same year, under Case V of Sch. D.

The respondent was a widow, and an American citizen domiciled in America. She possessed stocks and shares in America from which income arose. In February, 1928, she came to the United Kingdom to visit her daughter. She was not resident in the United Kingdom for the year ended the 5th April, 1928. Soon after arrival here, she was taken ill and became unable to return to America. From February to April, 1928, some £820 were remitted to her here from America out of her income. She was resident here during the year ended the 5th April, 1929, and in that year about £9,840 was remitted to her from America. The respondent admitted being assessable to income tax in respect of moneys remitted to her from America, but contended that for the year ended the 5th April, 1929, she was assessable only in respect of the £820 received in the year preceding the year of assessment. It was contended for the Crown that she was assessable in respect of everything received here during the year of assessment. The Commissioners were of opinion that the principle laid down in *Back* v. *Whitlock* [1932] 1 K.B. 747 applied, and reduced the assessment to £820.

The additional assessment of £816 arose as follows: Before leaving America for the United Kingdom, the respondent instructed one Elsey, her financial agent in America, to pay her daughter in the United Kingdom $4,000 a month as an allowance. Accordingly, on the 31st January, 1928, Elsey sent direct to the respondent's daughter here $4,000 of a sterling value of £816. He executed the remittance by drawing, as he was authorised, a cheque on the respondent's banking account in America. With the proceeds of the cheque he bought from another American bank a banker's draft on Barclays Bank, Chief Foreign Branch, in London, payable to the order of the respondent's daughter, for $4,000. The draft was posted in America. By Californian law, the gift to the respondent's daughter was complete and irrevocable at the very latest when the draft was placed in the post by Elsey. Had the respondent died immediately after the draft was posted, the sum represented by it would not have formed

part of her estate. It was contended for the respondent that the $4,000 ceased to belong to her before the draft left America, and that the additional assessment should, therefore, be discharged. It was contended for the Crown that there was no complete gift to the respondent's daughter until the draft was received by her in England. The Commissioners were of opinion that the additional assessment should be discharged.

LAWRENCE, J., said that the first question depended on the construction of proviso (*b*) (i) and (iv) to s. 29 (1) of the Finance Act, 1926. The Attorney-General had argued that "income received in Great Britain" in the proviso meant income received by a person chargeable to tax, and that the assessment in respect of the £9,840 was correct by virtue of (i) of the proviso, which should be read thus: "Income tax shall be computed as respects the year of assessment in which the income in respect of which the taxpayer was chargeable was first received in Great Britain on the full amount of the income arising within that year." In *Back* v. *Whitlock* [1932] 1 K.B. 747, Rowlatt, J., following *Fry* v. *Burma Corporation Ltd.* [1930] A.C. 321, decided that "in which the income first arises" in proviso (*b*) (i) of s. 29 (1) meant in which the income, although not taxable, first arises. In his (his lordship's) opinion, those cases concluded the present, and the tax must be assessed by reference to the year preceding the year of assessment in accordance with the main part of s. 29.

The second point involved the construction of r. 2 applicable to Case V of, and Miscellaneous Rule I applicable to, Sch. D of the Income Tax Act, 1918. His (his lordship's) attention had been directed by both sides to *Timpson's Executors* v. *Yerbury* (1936), 80 SOL. J. 184, where the Court of Appeal decided that gifts to the deceased's children only became complete on the receipt or encashment of certain bills of exchange by the children, and that, therefore, at the time the money came to England, it was income to which the deceased was entitled. The Attorney-General in the present case had argued that, even though the gift were complete outside the United Kingdom, if the subject-matter of the gift came here by direction of the taxpayer, it was received within the meaning of r. 2. The present case was distinguishable from that of *Timpson, supra*, on the ground that here it was impossible for the mother to stop the gift after it had been posted, because it was not a cheque drawn by her or her agent, whereas in *Timpson's Case, supra*, the mother could stop the gift at any time before actual receipt by the children. The decision of the Commissioners on each point must, therefore, be affirmed.

COUNSEL: *The Attorney-General* (Sir Donald Somervell, K.C.), and *R. P. Hills*, for the Crown: *J. M. Tucker*, K.C., and *Terence Donovan*, for the respondent.

SOLICITORS: *The Solicitor of Inland Revenue; Brown, Turner, Crompton Carr & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Robinson Brothers (Brewers) Ltd. *v.* Assessment Committee for the Houghton and Chester-le-Street Area of Durham.

Lord Hewart, C.J., Humphreys and du Parcq., JJ.
1st April, 1936.

RATING—LICENSED PREMISES—OWNED BY BREWERS AND MANAGED BY THEIR SERVANT—ANNUAL VALUE—ASSESSMENT OF—RENTS LIKELY TO BE PAID BY COMPETING BREWERS—EXTENT TO WHICH TO BE TAKEN INTO CONSIDERATION.

Appeal, by case stated from a decision of Durham Quarter Sessions reducing an assessment of gross annual value made by the appellant committee on certain premises.

The following facts were proved or admitted before Quarter Sessions: The respondent company, who were brewers, were the occupiers, by their manager, of a licensed public-house in Durham. All the draught beer and some of the bottled beer sold at the premises was brewed by the respondents. A brewer taking a tenancy of the premises would, by using the premises for the sale of his own beer, secure a profit greater than the retail profit which a tenant, not a brewer, might expect to make. There were several brewers who might be expected to compete for the tenancy of the premises if they fell vacant. Regard being had to the rent which a competing brewer might be prepared to give, the rent reasonably to be expected for the premises would be high enough to support a gross value of £112. Neither a free nor a tied tenant nor a brewer could be expected to pay a rent justifying that figure. If the brewers' competition were taken into account, but the rents which they might be expected to give in view of the special advantages to themselves were left out of account, except in so far as such possible rent raised the rent which a tenant not a brewer might pay, the annual rent to be expected would only support a gross value of £95. The respondents, being assessed in respect of the premises on a gross value of £112, and their proposal for a reduction of that figure having been refused by the appellant committee, appealed to Quarter Sessions. It was contended that the decision in *Bradford-on-Avon Union* v. *White* [1898] 2 Q.B. 630 applied and should be followed in principle; that the rent which brewers might pay for personal advantages ought to be excluded in estimating gross value except in so far as such a possible rent raised the market value generally. It was contended for the committee that, even under *Bradford-on-Avon Union* v. *White, supra*, the assessment was not excessive; that that decision was wrong; that, in estimating the gross value, the rents which brewers might possibly pay ought to be considered for all purposes and not merely in their effect on the market value of the premises. Quarter Sessions were of opinion that they were bound by *Bradford-on-Avon Union* v. *White, supra*, and reduced the assessment of gross value to £95.

LORD HEWART, C.J., said that all that the respondents contended was, that the special prices which brewers might give owing to personal considerations and not on account of the value of the premises ought to be excluded except in so far as the possibility that those special prices might be obtained raised the market value of the premises generally. In other words, the function of those who had to ascertain the rateable value was to ascertain the market value. In the *Bradford-on-Avon Union Case, supra*, the premises under consideration were not ones occupied by the brewers through their manager, but ones which they had let to a tenant. Quarter Sessions had there held that, in assessing the premises, it was the free house which had to be regarded, not excluding brewers as competitors, but treating them, like other tenants, from year to year, as tenants of a hereditament unfettered by any personal contract. The Divisional Court had upheld that decision and the principle which Quarter Sessions applied. The principle was made quite clear by Channell, J. [1898] 2 Q.B., at p. 638, and it was just as applicable in a case like the present where the brewers, instead of letting the hereditament, occupied it by their manager. The appeal must, therefore, be dismissed.

HUMPHREYS and DU PARCQ, JJ., agreed.

COUNSEL: *Comyns Carr*, K.C., and *F. Grant*, for the appellant committee; *Latter*, K.C., and *M. E. Rowe*, for the respondents.

SOLICITORS: *Richardson, Sadler & Co.; Godden, Holme & Ward.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Kliman (Inspector of Taxes) *v.* Stone.

Lawrence, J. 1st April, 1936.

REVENUE—INCOME TAX—ASSESSMENT—ANNUAL VALUE OF PREMISES—APPOINTED TIME BY WHICH TO BE DETERMINED—NEW FACTS ARISING AFTER THAT TIME—ADDITIONAL ASSESSMENTS—POWER OF ASSESSORS TO CONSIDER NEW FACTS—FINANCE ACT, 1930 (20 & 21 Geo. 5, c. 28), Sch. I, Pt. I—INCOME TAX ACT, 1918 (8 & 9 Geo. 5, c. 40), Sch. A.

Appeal from a decision of the Commissioners for the General Purposes of the Income Tax allowing an appeal by one, Stone, against additional assessments made on the occupier of certain premises in the nett sums of £104 for each of the three years ended the 5th April, 1932, 1933 and 1934, respectively.

In May, 1930, the premises, consisting of two rooms, first came into existence as the result of a reconstruction. On the 30th November, 1930, the date on which, by the Schedule to the Finance Act, 1930, the assessors are to bring in certificates of their assessments of annual values, the property was unoccupied. The general notices requiring the delivery of statements were issued pursuant to para. 2 of Pt. I to Sch. I to the Act of 1930. A particular notice was sent to the occupier in June, 1931, requiring a statement of rent and conditions of tenancy. The statement was never furnished. No assessment to income tax under Sch. A was made before the 30th November, 1930, but assessments in the sum of £56 nett were made for the years ended the 5th April, 1932, 1933 and 1934. In August, 1933, the inspector of taxes was informed that the respondent, Stone, owned the premises and received a higher rent than the assessments made on the occupier under Sch. A, that the respondent bought the premises in March, 1931, and that they were first occupied in January, 1931, under a lease for a term of twenty-one years from the 25th December, 1930, at a yearly rent of £160, the lease being a full repairing lease. Additional Sch. A assessments in the sum of £104 nett were thereupon made on the occupier and were signed by the Commissioners in September, 1933, notices of the assessments being issued in October, 1933. It was contended for the respondent that by Pt. I of Sch. I to the Finance Act, 1930, the statements of rent and conditions of tenancy requiring to be delivered had to relate to the year preceding the year of valuation, called the preparatory year, and assessments had to be brought in to the General Commissioners not later than the 30th November in the preparatory year. As the premises were vacant when the Sch. A assessments should have been made, the subsequent rent of £160 could not be taken to be the annual value within the meaning of General Rule I of the Sch. A Rules to the Income Tax Act, 1918, having regard to s. 28, Sch. I, Pt. I, paras. 1 and 3, and Pt. II, para. 1 of the Act of 1930, the actual rent, on which the assessment was made, being non-existent at the time when the assessment ought to have been made. For the Crown, it was contended, *inter alia*, that, as the premises only came into existence as a separate hereditament in May, 1930, sub-para. (1) of the General Rule I of Sch. A, as applied by para. 1 of Pt. II of Sch. I to the Act of 1930, was not applicable, and the annual value fell to be computed on the rack rent at which the premises were worth to be let by the year; and that, inasmuch as the premises were unoccupied until January, 1931, the rent reserved by the lease of that date, and the conditions of tenancy contained in it, were matters proper to be taken into account in determining the rack rent at which the premises were worth to be let by the year in the preparatory year.

LAWRENCE, J., said that the respondent's fundamental contention was that the 30th November fixed the time at which the annual value had to be determined, and that no facts arising after that date could be considered for the purpose of arriving at the assessment. That reasoning would presumably apply in future years to the 20th July, the date at which assessors must in future bring in certificates of their assessments of annual value. There was nothing express in the statutes preventing the Commissioners and other officials from taking into account facts arising after the material date. In his (his lordship's) opinion, such facts might be considered in making additional assessments under s. 125 of the Act of 1918, provided that they arose during the year of re-valuation. His lordship had not to decide whether the Commissioners could take into account relevant facts arising after the year of re-valuation. If they arose during the preparatory year, they could be considered. The appeal must, therefore, be allowed and the additional assessments restored.

COUNSEL: *The Attorney-General* (Sir Donald Somervell, K.C.), and *R. P. Hills*, for the Crown; *H. A. Hill* and *H. Samuels*, for the respondent.

SOLICITORS: *The Solicitor of Inland Revenue; Bennett and Bennett.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

London County Council *v.* Cambridgeshire County Council.

Lord Hewart, C.J., du Parcq and Goddard, JJ.
21st April, 1936.

LOCAL GOVERNMENT—MENTAL DEFECTIVE CONVICTED OF OFFENCE—ORDERED TO BE DETAINED IN CERTIFIED INSTITUTION IN PLACE WHERE OFFENCE COMMITTED—PLACE OF RESIDENCE—PRESUMPTION—RESPONSIBILITY FOR ACCOMMODATION OF DEFECTIVE—MENTAL DEFICIENCY ACT, 1913 (3 & 4 Geo. 5, c. 28), s. 44 (1) and (4).

Appeal by case stated from a decision of Cambridgeshire justices.

In June, 1935, one, Dorrington, a defective within the meaning of the Mental Deficiency Acts, 1913-1927, was convicted of larceny and ordered to be detained in a certified institution. It was also ordered in accordance with ss. 43 and 44 (1) of the Act of 1913, that the appellants, the London County Council, should be responsible for providing accommodation for the defective. The appellants thereupon applied under s. 44 (3) of the Act of 1913, and the Summary Jurisdiction (Mental Deficiency Act) Rules, 1933, for an order that their liability in respect of Dorrington should be transferred to the respondent council. At the hearing of the application, the following facts were proved or admitted: The defective was born in 1913 and lived with his mother at Islington until he reached the age of eighteen. He then left home and wandered about the country until the 24th May, 1935. He visited his mother's home for ten days in 1931, for four days in 1932, a few days in 1934, and one day in March, 1935. He had, since leaving home, been employed in casual work at different places, and had occasionally stayed in different casual wards. So far as could be ascertained, he had no settled place of residence at any time during the period. On the 24th May, he came into the borough of Cambridge. He appeared to have slept in the open the previous night. While in Cambridge, he committed larceny, and immediately afterwards left the borough. At the time of the offence, his poor law settlement was in London. There was doubt with regard to his place of residence. It was contended for the respondents that a doubt had arisen which rendered applicable s. 44 (4) of the Act of 1913, by which, in cases of doubt, the place of residence of a defective should be deemed to be the place of his poor law settlement, namely, London. It was contended for the appellants that no doubt had arisen within the meaning of s. 44 (4) because, as it had not been proved that the defective resided in some place other than that where the offence was committed, s. 44 (1) was applicable. By that sub-section, a defective found guilty of an offence "shall . . . be presumed to have resided in the place where the offence was committed, unless it is proved that he resided in some other place." The justices held that s. 44 (4) was applicable because a doubt had arisen.

LORD HEWART, C.J., said that the appeal must succeed. The words of s. 44 (1) showed plainly that, for the purpose of ascertaining which authority should be responsible for the accommodation of the person convicted, the presumption of residence applied unless residence in some other place were proved. Here the attempt to prove that the defective resided in some other place had failed. The presumption of residence in Cambridgeshire was accordingly not rebutted. It had been suggested that there was a difficulty with regard

to the applicability of s. 44 (4). As had, however, been stated by Avory, J., in *Berkshire County Council* v. *Reading Borough Council* [1921] 2 K.B. 787, at p. 795, no question of poor law settlement had to be considered at all until and unless a doubt arose as to where a person resided. "It is only to be considered where there is a doubt as to where the person in question resides in the ordinary sense of the term, without any technical meaning attached to the word such as is to be found in decisions relating to poor law settlements." It was conceivable that s. 44 (4) might in some circumstances refer to a case which would otherwise come within s. 44 (1). In this case, however, that was not possible.

DU PARCQ and GODDARD, JJ., agreed.

COUNSEL: *Vernon Gattie*, for the appellants; *Arthur Capewell*, for the respondents.

SOLICITORS: *J. R. Howard Roberts*; *Ashley Tabrum*, Clerk to the Cambridgeshire County Council.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CORRECTIONS.

In re Ogus.

In the report of this case at p. 425 of our issue of the 30th May, it should have been stated that the solicitor for the respondent was Mr. L. Fior, and not Messrs. S. Rutter & Co.

Messrs. S. Rutter & Co. were solicitors for the respondent in another motion *In re Ogus* heard on the same day, in which the respondent was successful. The latter motion has not been reported.

In re Crocker.

In the report of this case at p. 486 of last week's issue, it was stated that the plaintiff recovered judgment on admissions of negligence by both defendants. We are obliged to the solicitors for the applicant on the motion for pointing out that this is incorrect. The admission of negligence was made in the defence of the motorist alone, and not on the part of the lorry owners.

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Progress of Bills.

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Read Second Time. [24th June.
Grimsby Corporation (Trolley Vehicles) Provisional Order Bill.
Read First Time. [23rd June.
Hornchurch Urban District Council Bill.
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Huddersfield Corporation (Trolley Vehicles) Bill.
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Kingston-upon-Hull Corporation Bill.
Commons' Amendments agreed to. [23rd June.
Llanelly District Traction Bill.
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London and North Eastern Railway (General Powers) Bill.
Read Second Time. [23rd June.
London Midland and Scottish Railway Bill.
Read Third Time. [23rd June.
Ministry of Health Provisional Order (Leeds) Bill.
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Pier and Harbour Provisional Order (Cowes) Bill.
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Pier and Harbour Provisional Order (Keyhaven) Bill.
Read First Time. [23rd June.
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Pier and Harbour Provisional Order (Paignton) Bill.
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Read First Time. [23rd June.
Pilotage Authorities (Limitation of Liabilities) Bill.
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Private Legislature Procedure (Scotland) Bill.
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Public Health Bill.
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Public Health (Drainage of Trade Premises) Bill.
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Public Health (London) Bill.
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Rickmansworth and Uxbridge Valley Water Bill.
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Road Traffic (Driving Licences) Bill.
Read Third Time. [23rd June.
Weights and Measures Bill.
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Widows', Orphans' and Old Age Contributory Pensions Bill.
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House of Commons.

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Brighton Corporation Bill.
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Reported, with Amendments. [18th June.
Foundling Hospital Bill.
Read Third Time. [22nd June.
Grimsby Corporation (Trolley Vehicles) Provisional Order Bill.
Read Third Time. [19th June.
Hornchurch Urban District Council Bill.
Read First Time. [24th June.
Hours of Employment (Conventions) Bill.
Read Third Time. [24th June.
Huddersfield Corporation (Trolley Vehicles) Bill.
Read Third Time. [18th June.
Ilfracombe Urban District Council Bill.
Read Second Time. [22nd June.
Kingston-upon-Hull Corporation Bill.
Read Third Time. [18th June.
Land Registration Bill.
Read Third Time. [24th June.
London County Council (General Powers) Bill.
Reported, with Amendments. [18th June.
London County Council (Money) Bill.
Read Second Time. [18th June.
Manchester Corporation Bill.
Read Second Time. [23rd June.
Ministry of Health Provisional Order (Leeds) Bill.
Read Third Time. [19th June.
North-West Kent Joint Water Bill.
Read Second Time. [22nd June.
Petroleum (Transfer of Licences) Bill.
Read Third Time. [24th June.
Pier and Harbour Provisional Order (Cowes) Bill.
Read Third Time. [22nd June.
Pier and Harbour Provisional Order (Keyhaven) Bill.
Read Third Time. [22nd June.
Pier and Harbour Provisional Order (Maryport) Bill.
Read Third Time. [19th June.
Pier and Harbour Provisional Order (Paignton) Bill.
Read Third Time. [22nd June.
Pier and Harbour Provisional Order (Whitley Bay) Bill.
Read Third Time. [22nd June.
Public Health Bill.
Reported. [23rd June.
Rochester Corporation Bill.
Read Second Time. [22nd June.
Solicitors Bill.
Reported, with Amendments. [23rd June.
South Metropolitan Gas Bill.
Read Second Time. [22nd June.

Questions to Ministers.

MOTORING OFFENCES (POLICE COURT CHARGES).

Captain STRICKLAND asked the Home Secretary whether in view of the difficulty and expense incurred by motor cyclists and motor drivers in attending distant police courts at which the magistrates are unwilling to hold evening

sessions, he will consider the setting up of evening courts to try alleged motor offences.

Mr. LLOYD: As previously stated, it is for the justices themselves to decide when they will sit to hear cases. If the suggestion is that in districts where justices do not think evening sittings necessary or desirable, some specially constituted tribunal should be set up to act in place of the justices, my right hon. Friend could not support such a suggestion.

Captain STRICKLAND asked the Home Secretary whether he will issue a circular recommending that, in the cases of motor cyclists and motor drivers attending distant police courts held in the daytime and entailing loss of wages and cost of transport, the magistrates shall take such proved loss into consideration in assessing fines in the event of conviction and for the assessment of costs in the event of acquittal.

Mr. LLOYD: Motorists are not the only persons who may be put to inconvenience or monetary loss by having to answer a criminal charge. When a fine is imposed, it is the duty of the court in fixing the amount to take into account all the circumstances of the individual case, including the means of the offender. The circumstances inevitably vary from case to case, and my right hon. Friend could not undertake to issue such a circular as my hon. Friend appears to have in mind. [22nd June.

POLICE COURTS (MAGISTRATES ATTENDANCE).

Mr. GARDNER asked the Home Secretary whether he is aware that in most northern towns the method of summoning magistrates to hear cases in the police courts generally rests with the clerks to the courts; and, in view of the undesirability of this procedure, whether he will make inquiries into this matter.

Sir J. SIMON: It rests with the justices themselves to arrange for the staffing of each session of the court, and any arrangements made by the clerk are subject to the approval of the bench. At many courts attendance is regulated by a rota. If the suggestion is that the clerk selects particular justices to hear particular cases, I know of no foundation for the suggestion. [18th June.

The Law Society.

NOTICE OF ANNUAL GENERAL MEETING.

The annual general meeting of the members of the Society will be held at the Society's Hall (Chancery-lane entrance), on Friday, the 10th July, at 2 p.m.

The following are the provisions of bye-law 15 as to the business to be transacted at an annual general meeting, namely:—

"The business of an annual general meeting shall be the election of President, Vice-President, and Members of Council, as directed by the Charter, and also the election of Auditors; the reception of the accounts submitted by the Auditors for approval, the reception of the annual report of the Council, and the disposal of business introduced by the Council, and of any other matter which may consistently with the Charter and bye-laws be introduced at such meeting."

The following are the names of the candidates nominated to fill the eleven vacancies in the Council, and in the offices of President, Vice-President, and Auditors:—

List of qualified members of the Society nominated as members of the Council to be elected at the annual general meeting on the 10th July: Ernest Edward Bird, Thomas Hume Bischoff, M.A., William Arthur Coleman, Eric Davies, LL.B., Owen Johnston Humbert, Arthur Murray Ingledew, Philip Raynsford Longmore, O.B.E., M.A., Sir Philip Hubert Martineau, B.A., William Egerton Mortimer, M.A., William Rutley Mowll, Anthony Frederick Ingham Pickford, B.A., Thomas William Wood Roberts, J.P., and Ian David Yeaman.

List of qualified members proposed as President and Vice-President: As President, Hubert Arthur Dowson; as Vice-President, Francis Edward James Smith, M.A.

List of qualified persons proposed as Auditors of the Society: John Stephens Chappelow, F.C.A., Ronald Bruce McDonald, and George Edward Mackenzie Skues.

Mr. Henry Wilfred Carter (London) will move—

"That having regard to the pronouncements of the Council of The Law Society against touting and undercutting and in view of the scales of legal charges in use by solicitors for building societies (presumably fixed by the building societies) the members of The Law Society present at this meeting assure the Council of their hearty support in any endeavours they are making or may make to bring about an alteration of the present conditions and competition which the general body of practising solicitors have to face; and, if it should prove desirable or necessary to promote legislation to bring about the requisite changes, pledge themselves to do all in their power to 'back up' the Council in their efforts."

ANNUAL REPORT.

The annual report of the Council to be presented to the general meeting of the members on 10th July, 1936, informs us that there are eleven vacancies on the Council, ten of which are caused by retirement in rotation and one by the resignation of Mr. H. H. Scott; particulars of the nominations appear in the announcement of the annual general meeting which appears immediately before this analysis of the report.

MEMBERSHIP OF THE SOCIETY.

The Society has now 10,753 members, of whom 4,305 practise in town and 6,448 in the country. The number of members who joined the Society during the past year is 400, as compared with 464 in the previous year. After allowing for deaths, resignations, and exclusions, the number of members shows an increase for the year of 69. The present membership is once again the highest in the Society's history, being approximately two-thirds of the total number of practising solicitors. The Council urge all members to do what they can towards persuading non-members to join the Society. By this means they will be assisting in its work of protecting and advancing the interests of the profession.

LEGAL EDUCATION.

The number of articled clerk students attending law schools (excluding the Universities of Oxford, Cambridge, and London) in the autumn term, 1935, was 1,132, a decrease of 59 compared with the corresponding figures for the previous year.

SOLICITORS BILL, 1936.

This Bill, which was intended in the main to give effect to such of the recommendations regarding the training of articled clerks as had been adopted by the Council and involved legislation, was introduced in the House of Lords by Lord Wright, the Master of the Rolls, and has passed all its stages in that House.

Mr. Croom-Johnson, K.C., is taking charge of it in the House of Commons. The Bill, if passed, will come into effect on the 1st January, 1937. The only alteration of substance in the Bill as it was submitted in the last annual report is that there has been reserved for any clerk articled to a solicitor who may not have been in continuous practice for a period of five years, and has not obtained special leave to take an articled clerk, a right to apply to the Master of the Rolls that his service to that solicitor shall be deemed to be good service. There has been added to the Bill also a valuable provision to the effect that the time within which proceedings may be taken against unqualified persons who prepare land registration documents or papers for probate, shall be extended from six months from the commission of the offence to two years after the commission of the offence, or six months next after its discovery.

PROVINCIAL MEETING, 1935.

The fifty-first Provincial Meeting of the members of The Law Society was held at Hastings on the 24th and 25th September, 1935, on the invitation of the Hastings and District Law Society.

The meeting was favoured with fine weather, and it was possible, therefore, fully to enjoy the very attractive social events which had been so kindly arranged.

FUTURE PROVINCIAL MEETINGS.

The Nottingham Incorporated Law Society have invited the Law Society to hold their Provincial Meeting at Nottingham in September, 1936.

The Devon and Exeter Law Society have invited the Law Society to hold their Provincial Meeting at Exeter in the year 1937.

The Manchester Law Society will hold its Centenary in 1938, and in view of the fact have invited the Law Society to hold their Provincial Meeting at Manchester in that year.

The Worthing Law Association have invited the Law Society to hold their Provincial Meeting at Worthing in the year 1939.

All the foregoing invitations have been accepted, and the Council have expressed to the inviting Law Societies their thanks on behalf of members generally.

QUALIFICATION FOR MEMBERSHIP OF THE SOCIETY.

The President, in his address at Hastings, directed attention to the fact that, under the Society's Charters, only those solicitors who hold a practising certificate, or have held such

a certificate, are eligible for membership of the Society, and that, therefore, many managing clerks who have been admitted but have never found it necessary to take out a practising certificate are ineligible for membership.

Subsequently the matter was submitted to the Council, when they requested the President to enquire of the Registrar of the Privy Council whether he considered it would be possible so to amend the Charter as to extend qualification for membership to any person who had been admitted on the Roll. The President attended upon the Registrar accordingly and secured from him a promise that the matter should receive consideration.

Solicitors' Remuneration.

Restoration of Percentage Additions.

Towards the end of last year, after communicating with the Associated Provincial Law Societies, the Council requested the Lord Chancellor to receive a deputation so that they might submit to his Lordship their view that, as the financial stress that Lord Sankey had considered justification for reducing the 33⅓ per cent. addition had ceased to such an extent as to permit of the reductions which had been made in Civil Service salaries being restored, the reduction in solicitors' charges should be restored also. A deputation attended upon the Lord Chancellor accordingly.

Their representations were received sympathetically by the Lord Chancellor and, after consideration, rules were made increasing the percentage addition to the remuneration under the Remuneration Order, 1893, and under the Land Registration Order.

Rules were made also by the Supreme Court Rule Committee, making a similar increase.

All the increases took effect as from the 13th April, 1936.

Solicitors' Accounts Rules.

With regard to the ownership of moneys standing on client account of bankrupt solicitors, the Council have been advised by counsel that as between the clients and the creditors such moneys are trust moneys and are not available for distribution among the general body of creditors unless the credit balance is in excess of claims of the clients, and the effect of the Solicitors Act, 1933, and the rules made under it, is to dispense with the necessity of actually tracing the trust moneys into the particular account.

Touting and Undercutting: Profit-Costs Sharing: Legal Aid Societies.

This subject was referred to in both the last two annual reports. It will be recalled that the National Association of Building Societies had recommended the constituent Societies (*a*) to eliminate from their prospectuses or other literature any reference to purchasing costs or conveyancing charges, and (*b*) to include therein a note to the effect that, when an intending purchaser was purchasing a property to be offered as security, the purchaser's solicitor's costs for preparing the conveyance would be additional.

The Association had further pointed out that any printed scale of mortgage charges did not cover the whole of the legal costs involved in the purchase and mortgage of a property.

Following upon these recommendations, the time of the Council has been occupied to a very considerable extent during the past year in considering the possibility of issuing rules under s. 1 of the Solicitors Act, 1933, to discourage (*a*) touting and undercutting, (*b*) the sharing of solicitors' costs with unqualified persons, and (*c*) the activities of so-called legal aid societies.

Draft rules have been prepared and have been discussed with the Associated Provincial Law Societies, in addition to which there have been interviews with the building societies' solicitors who will be affected by the rules.

The Council are hopeful that at no very distant date it may be possible to submit the rules for approval to the Master of the Rolls.

Royal Commission on the Despatch of Business at Common Law.

The Royal Commission appointed to enquire into the state of business in the King's Bench Division, and in particular to report whether, with a view to greater despatch, any reform should be adopted in connection with the arrangements of the circuits, or the devolution of work from the High Court to the County Court, or in any other direction, issued its report in January last.

Mr. L. S. Holmes, of Liverpool, tendered evidence on behalf of the Associated Provincial Law Societies. At a subsequent date certain views were expressed on behalf of the Council of The Law Society by the Secretary as to the re-arrangement of the circuit paper and as to enabling solicitors in London to keep themselves more closely in touch with those responsible for the preparation of the daily lists.

Country Solicitors attending Trials in London.

This subject was mentioned in the last annual report, where it was stated in connection with the suggestion that Taxing Masters should allow the costs of attendances of country solicitors at hearings of actions and appeals in London, that the Council had felt themselves unable to intervene beyond urging that the Taxing Master's discretion might be exercised more liberally in that direction.

As a result of a letter from a firm of solicitors in the provinces, to which the attention of the Lord Chancellor's Permanent Secretary was drawn, the reply was forthcoming that, whilst the Lord Chancellor realised the propriety of the attendance of the country solicitor in certain cases, it did not appear possible to lay down as a general principle that the attendance of country solicitors should be allowed on every occasion. He had, however, drawn the attention of the Taxing Masters to the matter. He thought that in each case the question of allowance or disallowance must remain for the decision of the Taxing Master, after considering the facts of each case.

The Royal Courts of Justice.

Saturday Closing of Offices.

The Lord Chancellor enquired what would be the views of the Council as to a suggestion that the Stamp Office at the Royal Courts of Justice, and the Summons and Order Department, and Crown Office and Associates' Department, should be closed at 1 o'clock on Saturdays instead of at 1.30.

The Council replied that in their opinion there was no need for the offices mentioned to remain open after 1 p.m. on Saturdays.

A rule was made accordingly.

Banks doing Solicitors' Work.

The Council have received a certain number of complaints during the past year that there is a tendency of banks to attract to themselves business of a legal or semi-legal nature which in the past has been entrusted to solicitors. In one case it appeared that the customer of a bank had been requested to allow the bank manager to carry through an administration "as it would be much less expensive than a solicitor." Several other similar complaints were received.

Subsequently the Council received an assurance that all the managers of the bank to which special reference had been made had precise instructions that they were not to do anything which could be construed as an attempt to encroach upon the province of solicitors.

Counsel and Solicitors: Professional Etiquette.

In the last annual report, reference was made to a resolution which had been passed at a special general meeting of the Society held on the 25th January, 1935, that the Council should be urged to consider the serious prejudice to litigants and solicitors in cases in which counsel duly briefed for trial of action are prevented from fulfilling their engagements. The resolution was referred to the Professional Purposes Committee, who in turn invited the views upon it of the General Council of the Bar.

The General Council replied that they regretted that any such prejudice should arise by counsel who had been briefed being prevented from attending to the case owing to the necessity of appearing in another court. Such a circumstance, however, often was inevitable, as usually it was impossible to know at the time the brief was accepted when the case in fact would be heard. The General Council pointed out that briefs as a rule are delivered and accepted on the understanding that it is possible that counsel may be prevented from attending the case. They considered that the brief should be returned directly the barrister finds that there is a serious probability that he may not be able to attend, and they stated that if any case were brought to their notice in which there had been a failure properly to consider the interests of the clients they would take up the matter with the barrister concerned. The General Council added an expression of opinion that it would be impossible for inconvenience to be obviated entirely until the Bench was sufficiently strengthened to enable cases to be heard on fixed dates.

The Council decided that in the circumstances no further action could be taken usefully except (as was done) to forward to the Royal Commission on King's Bench business a copy of the views which the Bar Council had expressed.

Counsel's Clerks' Fees.

Members complained that in connection with a brief delivered to counsel on the hearing before the Committee of Investigation appointed by the Minister of Agriculture, under s. 9 of the Agricultural Marketing Act, 1931, a barrister's clerk had sought to obtain a fee of 5 per cent. on the brief fee.

The Council replied that in their opinion no more than 2½ per cent. was properly chargeable, and referred the subject

of counsel's clerks' fees to a separate committee. The report of that committee shows that the Council have stated to the Bar Council that they can find nothing in the text-books or in the books of practice to justify an allowance of more than 2½ per cent. to the clerk, calculated on the fee marked in cases of fifty guineas and upwards on a barrister's brief, and in their view that allowance should not be exceeded whether with regard to litigation or not, except in connection with cases in the House of Lords, the House of Commons, and the Privy Council, in respect of which 5 per cent. no doubt is properly payable.

Elegit Proceedings.

The Council were asked to consider the desirability of urging the simplification of procedure by way of elegit by incorporating an order for sale of the real estate affected in the original order for enquiry.

The matter was referred to a special committee, and, as a result of the report, the Council expressed the view that proceedings by way of elegit are cumbrous and that the Lord Chancellor should be approached with a view to the abolition of the enquiry by a sheriff and a jury as to the lands of the debtor, and their value, as a condition precedent to the execution of the writ. Representations were made accordingly to the Lord Chancellor.

Coroners.

In April, 1935, a departmental committee, under the chairmanship of Lord Wright, was appointed to consider the law and practice relating to coroners, and whether any changes were desirable and practicable. The Council were invited to give evidence and were represented before the committee by Mr. Philip R. Longmore, who, on their behalf, without suggesting any drastic changes, made various suggestions with regard to details of the practice.

The report of the committee was issued in February, 1936.

Money Payments (Justices Procedure) Act, 1935.

This Act is intended to secure that defendants in the police courts who have been convicted and fined shall not as a general rule be committed to prison for non-payment of the fine until on a separate occasion subsequent to their conviction they have been brought before the magistrates in person and examined as to their means.

In this connection the Council received representations regarding the work of lay magistrates in the Metropolis. They referred the subject to the Legal Procedure Committee. Acting upon the recommendation of that committee the Council addressed a letter to the Home Secretary urging, with regard to summary jurisdiction work in London, that proper accommodation should be afforded for persons brought before lay magistrates in custody, and the necessary machinery should be provided to enable the lay magistrates to deal with the cases and to transact the additional work which will result from the passing of the new Act, or that the number of stipendiary magistrates should be increased. With regard to proceedings for the recovery of rates, the Council expressed the opinion that unless other arrangements were made the justices would not have either the machinery or necessary accommodation for dealing with these cases in future.

The Home Office replied that, as regards accommodation, the fact that under the procedure prescribed by the 1935 Act some defendants might be brought before justices in custody, or might surrender to their bail, did not mean that it would be necessary to provide docks or cells, and so far as the Secretary of State could ascertain, no such difficulties of accommodation exist as would prevent the lay justices from continuing to do such classes of work as they had dealt with in the past. The Home Office agreed it would be necessary for the justices, as a result of the new Act, to arrange for some additional sittings, but the Secretary of State had received no intimation that the justices would find difficulty in making such arrangements, and if they were willing to make any necessary arrangements for additional sittings in order to enable them to deal under the new procedure with such classes of cases as they had been in the habit of taking, there appeared to him to be no reason why the new Act should affect the existing allocation of work between the lay justices and the stipendiary magistrates.

This being the position, the Council decided to await the result of the Act before intervening further.

Justices of the Peace.

The Birmingham Law Society directed attention to s. 33 (5) of the Local Government Act, 1933, whereby a solicitor who becomes chairman of a district council is by virtue of his office a justice of the peace for the county, with the result that he and the other members of his firm are prohibited from practising before the bench of that county. The Birmingham Law Society stated that this prohibition had prevented solicitors from accepting the office of chairman of a district council. They suggested that the section should be made optional, so that a solicitor could become a chairman of a district council but need not take office as a magistrate.

The matter was referred to the Parliamentary Committee, who were of the opinion that except as regards mayors it was desirable that those occupying municipal posts, whether solicitors or not, which carry the office of justice of the peace, should not become justices unless they take the oath of service.

Representations were accordingly made to the Minister of Health, who replied that he could take no immediate action but would consider the suggestion when an opportunity arose for introducing the legislation which would be required.

Subsequently, letters were received from members of the Society suggesting that the difficulty could be overcome by the Lord Chancellor exercising the power conferred upon him by s. 4 of the Justice of the Peace Act, 1906, by excluding the justice of the peace from the exercise of his functions as such justice. The Council on this point had considered that mere exclusion of the justice of the peace from the exercise of his functions did not make him any the less a justice of the peace, and that therefore an Order by the Lord Chancellor did not serve the purpose intended. The Council, however, communicated with the Lord Chancellor's Department, who expressed the view that as the effect of an Order under s. 4 is to render the holder of an office incapable of exercising any of the powers or functions of a justice of the peace, and to take from him his right to act as a justice *ex virtute officii*, the practical result is that a person who is the subject of such an Order ceases to be a justice of the peace though he may hold an office to which had been attached the right of acting as a justice.

London and Middlesex (Improvements etc.) Bill.

Clause 57 of this Bill is intended to provide for the transfer to the Standing Joint Committee of Middlesex of all or any of the powers and duties of the Middlesex Quarter Sessions and all or any of the powers and duties of the justices with respect to the appointment, remuneration and dismissal of justices' clerks and of the persons to assist such clerks in the performance of their duties.

The Incorporated Justices' Clerks' Society took exception to the adoption of the principle that the appointment and dismissal of a judicial officer such as the justices' clerk should rest in the hands of a partially elected body. That society regard it as of primary importance that the appointment and dismissal of justices' clerks should rest with the justices themselves, who should be independent of and protected from outside influence.

Interviews took place with the Middlesex County Council, who have given undertakings that clauses will be introduced in the Bill to meet the objections.

Probate Registry.

The Council from time to time have received complaints as to the illegibility of photostat copies of wills issued from the Principal Probate Registry, and they have passed on such complaints to the Registry.

The Senior Registrar replied that, if pressed to do so, he would agree that a solicitor should be allowed to apply to have an engrossed copy of the will photographed where it is contended that the reduction of the original in the photographic process would give an unsatisfactory result. He would have, however, to reserve the right to sanction such a course only where he was satisfied that direct photography could not properly be applied.

The Registrar stated that with regard to photostat copies of wills supplied after the will had been proved, he was not entirely satisfied that photographic copies of wills proved prior to the 1st January, 1931, were always of a satisfactory standard, and he had under consideration measures to obviate the issue of unsatisfactory copies of that description.

On the 10th March, 1936, a new Non-Contentious Probate Fees Order was issued which came into operation on the 1st April, 1936, and provided that in future the charge of 1s. 6d. for each photographic sheet of a copy or extract of a will supplied by the Probate Registry was to apply only to sheets of foolscap size, and that, if the sheet exceeded foolscap size, a charge of 3s. would be made for each sheet.

The Registrars wish to make it clear that it will be entirely at the option of the applicant whether the larger size is supplied and the double fee charged.

It is hoped that this option will mitigate the feeling of dissatisfaction to which the Council directed the Senior Registrar's attention.

"Solicitors' Remuneration Digest": "Law, Practice and Usage in the Solicitor's Profession."

The "Solicitors' Remuneration Digest," a copy of which is supplied free of cost to each member of the Society, incorporates all the decisions of the courts on the Solicitors'

Remuneration Orders, and the opinions which have been expressed from time to time by the Council on the Orders.

The publication of "Law Practice and Usage in the Solicitor's Profession," a copy of which is also supplied free of cost to each member, incorporates many decisions of the courts affecting the practice of solicitors apart from the Solicitors' Remuneration Order, and also opinions of the Council of interest to solicitors in connection with their everyday work.

The last edition of each of the foregoing publications is dated 1923, and since that date there have been many supplemental opinions expressed by the Council and published from time to time in The Law Society's *Gazette*. The Council consider that a new edition will be useful to members, and of advantage to the profession. Accordingly, they have directed their preparation. It is hoped that they will be completed in the early part of 1937.

Associated Law Societies of Wales and Monmouth.

The Council have been informed of the constitution of the Associated Law Societies of Wales and Monmouth, and of the fact that Mr. A. M. Ingledew, of Cardiff, has been appointed President of the Association, and Mr. F. H. Jessop, of Aberystwyth, as Vice-President, and that the following Law Societies in Wales had affiliated themselves to it:—

Aberystwyth, Bridgend, Cardiff, Llanelly, Merthyr and Aberdare, Mid-Wales, Pontypridd, Swansea and West Wales.

Poor Persons Procedure.

The annual report of the work done during the period between 1st January, 1935, and 31st December, 1935, is included in the appendix to the Society's report. It is of special interest on the present occasion as it brings to a close the first ten-year period of the work.

It is mentioned in the report that it was only in London that any practical difficulty has been experienced in securing the services of the conducting solicitors. It was stated that, although in London there are approximately 5,378 practising solicitors, only 1,675 had placed their names on the rota of conducting solicitors, and that this number was not adequate. Very shortly after the issue of the report, the President, Sir Harry Pritchard, addressed a personal letter to each solicitor in London whose name did not appear upon the rota, and the Council are glad to be able now to report that, as a result of that appeal, more London solicitors to the number of 126 have acceded to it. For this response the Council are grateful, and they hope that as time goes on additional volunteers will send in their names.

Proceedings under the Solicitors Act, 1932.

The forty-seventh annual report of the Disciplinary Committee constituted under the Solicitors Act, 1932, show that, on the application of the Society, the names of nine solicitors, who had previously been convicted on indictment and sentenced to terms of imprisonment, were struck off the Roll by order of the committee; that, on the application of private individuals and of the Society, the names of four solicitors were struck off the Roll and five other solicitors were suspended from practising and ordered to pay costs; that in one case the committee found that the conduct of the solicitor was deserving of censure and he was ordered to pay the costs as between solicitor and own client; that in three cases the committee, whilst acquitting the solicitor of professional misconduct, found that the applications were justified and in each case the solicitor was ordered to pay the costs; and that in one case the committee dismissed the application and ordered the complainant to pay the solicitor's costs.

Ten unqualified persons have been convicted under s. 46 of the Solicitors Act, 1932, for wilfully pretending to be qualified to act as a solicitor, and in the case of one unqualified person and one uncertificated solicitor, the summons was dismissed on payment of costs. Three further summonses were withdrawn upon an undertaking by the defendants not to repeat the offence and on payment of costs.

One limited liability company and its manager were prosecuted to conviction under s. 1 of the Solicitors Act, 1934, for wilfully pretending to be qualified to act as solicitors.

One conviction was obtained for an offence under s. 47 of the Solicitors Act, 1932 (preparing legal instruments for profit).

Fifteen applications under s. 52 of the Solicitors Act, 1932 (for leave to employ solicitors struck off the Roll or suspended from practice), were considered by the Council, who refused five and granted permission in ten cases for periods of six or twelve months.

The Council considered thirty-seven applications by articled clerks under s. 21 of the Solicitors Act, 1932, for permission to hold office during articles.

The Council considered sixty-two applications for the issue of a practising certificate under s. 38 of the Solicitors Act, 1932, and refused seven. Three applicants appealed from their decision and the Master of the Rolls dismissed the appeal in one case and the other two appeals stand adjourned.

As indicating the magnitude of the work undertaken by the Professional Purposes Committee, it is convenient to mention here that that committee dealt, during the period under review, with approximately 1,600 applications affecting the practice and etiquette of the profession.

Societies.

City of London Solicitors' Company.

At the twenty-seventh Annual Meeting of this Company, held at the Guildhall, on 17th June, the chair was taken by the Master, Mr. E. G. Roscoe, who moved the adoption of the report of the Court of Assistants and commented on the matters mentioned therein. The annual banquet had been postponed, he said, on account of the lamented death of King George V. but had been held on 25th May and attended by 272 members and guests. He thought that the objects of the company, which were concerned with the advancement of the interests of solicitors practising in the city, had been adequately carried out. One of the objects was to afford opportunities for personal acquaintance and social intercourse in what was, perhaps, rather a dreary and unsociable profession. He could say, confidently, that the annual banquet had achieved that end, and that the sherry parties, the second of which had been held in November, had also contributed. The Court of Assistants had to deal with a good deal of work which was necessary but which did not meet the light of day. There had been ten monthly meetings during the year, and the Standing Committees had also met on many occasions. The Court had drawn up a comprehensive report for submission to the Royal Commission on Despatch of Business at Common Law and had also, at the invitation of The Law Society, considered a memorandum and reported on the very difficult subject of touting, undercutting and profit costs sharing by solicitors. All matters were dealt with from the point of view of solicitors with city practices. It had been brought to the notice of the Court that the distribution of poor persons' cases was somewhat uneven, some solicitors having a great many such cases and others having few or none. The Court wished to appeal to members to accept a reasonable number every year. Through the generosity of Past-Master R. S. Fraser, a new prize had been established. It was to be called the City of London Solicitors' Company Grotius Prize, and to be given for the best paper on private international law written in The Law Society's honours examination by a candidate articled in the City of London. The City of London Solicitors' Company golf challenge cup had been won at Walton Heath by Mr. R. C. Bolton. The Company had lost its Honorary Counsel, Mr. Stuart Bevan, and had appointed Mr. A. T. Miller, K.C., in his place. Six members had also died during the year. Nevertheless, the numbers had increased by four, and the membership now reached 248. The greater the number of members the greater the influence of the Company. The Master concluded with an expression of his gratitude to the officers, especially to Mr. G. L. F. McNair, Past-Master and Honorary Treasurer, Mr. A. F. Bell, the Clerk, Mr. H. D. P. Francis, Past-Master and Mr. A. T. Cummings.

Mr. Anthony Pickford, Senior Warden, seconded the motion.

Past-Master M. C. Matthews drew attention to the valuable service rendered by the Company in the arrangement it had with Messrs. Stevens & Sons for the free use of their law library.

The Master agreed that the library was being used more and more. The figures for the year were: Library used by members on 348 occasions; value of books lent, £609 1s. 9d.

Mr. A. S. Hicks, the Honorary Auditor, presented the balance sheet and statement of accounts, showing a credit balance of £84 3s. 10d., and its adoption was moved by the Master and seconded by the Junior Warden, Mr. H. S. Syrett.

Mr. C. Stanley Crosse proposed a vote of thanks to the Honorary Auditor and his re-appointment for the ensuing year. This was seconded by Past-Master T. H. Wrensted and carried with acclamation.

Past-Master M. C. Matthews proposed and Past-Master G. L. F. McNair seconded a vote of thanks to the Master.

Mr. Douglas Cosmo Delfosse, solicitor, of Lyonshall, and of Kington, Hereford, left £19,786, with net personalty £18,002.

Gray's Inn.

GRAND DAY.

Thursday, 11th June, being the Grand Day of Trinity Term at Gray's Inn, the Treasurer (Master the Right Hon. Lord Morison) and the Masters of the Bench entertained at dinner the following guests: His Excellency The Belgian Ambassador (Baron E. de Cartier de Marchienne), His Grace The Duke of Sutherland, K.T., The Right Hon. Sir Isaac Isaacs, G.C.M.G., The Right Hon. Sir Paul Ogden Lawrence, The Right Hon. Lord Justice Romer, The Lord Advocate (The Right Hon. T. M. Cooper, K.C., M.P.), Sir Herbert Cunliffe, K.C., The President of The Law Society (Sir Harry Pritchard), Mr. W. S. Morrison, M.C., K.C., M.P., His Honour Hugh Sturges, K.C., Mr. Theobald Mathew, Mr. A. C. Bossom, M.P., Mr. J. St. Helier Lander. The Benchers present in addition to the Treasurer were: The Right Hon. Sir Dunbar Plunket Barton, Bart., K.C., Mr. Herbert F. Manisty, K.C., The Right Hon. Lord Atkin, Sir Montagu Sharpe, K.C., Sir Cecil Walsh, K.C., The Right Hon. Lord Thankerton, The Right Hon. Lord Greenwood, K.C., The Hon. Mr. Justice Greaves-Lord, Mr. Bernard Campion, K.C., Mr. R. Storry Deans, The Hon. Mr. Justice Hilbery, Mr. Noel Middleton, K.C., Mr. N. L. C. Macaskie, K.C., Mr. W. Trevor Watson, K.C., Sir Albion Richardson, C.B.E., K.C., Mr. R. Warden Lee, The Very Rev. W. R. Matthews, K.C.V.O., D.D., with the Preacher (The Rev. Canon F. B. Ottley, M.A.) and the Under-Treasurer.

Rules and Orders.

THE SOLICITORS' REMUNERATION (MANORIAL INCIDENTS) ORDER, 1936. DATED MAY 21, 1936.* [S.R. & O. 1936. No. 516/L.12. Price 1d. net.]

[*This Order (which appeared on p. 451 of our issue of the 6th June) having lain before both Houses of Parliament for one month in accordance with section 56 (4) of the Solicitors' Act, 1932, came into operation on the 22nd day of June, 1936.]

Legal Notes and News.

Birthday Legal Honours.

BARON.

Sir Henry Strother Cautley, Bt., K.C., M.P. for East Grinstead since January, 1910, and for East Leeds, 1900-06. For political and public services. Called to the Bar by the Middle Temple, 1886.

BARONET.

Colonel The Hon. Sidney Cornwallis Peel, C.B., D.S.O., T.D., D.L., Chairman of the Advisory Committee, Export Credits Guarantee Department. Called to the Bar by Lincoln's Inn, 1898.

KNIGHTS.

His Honour Judge Stanley Anthony Hill Kelly, County Court Judge, Circuit 42.

John Rolleston Lort-Williams, Esq., K.C., Judge of the High Court of Judicature at Fort William in Bengal. Called to the Bar by Lincoln's Inn, 1904.

The Hon. John Ranken Reed, C.B.E., Senior Judge of the Supreme Court and Acting Chief Justice, Dominion of New Zealand.

Ernest Handforth Goodman Roberts, Esq., Barrister-at-Law, Chief Justice of the High Court of Judicature at Rangoon, Burma. Called to the Bar by the Inner Temple, 1916.

Arthur Frederick Clarence Webber, Esq., Colonial Legal Service, Chief Justice, Sierra Leone. Called to the Bar by the Inner Temple, 1896.

ORDER OF THE BATH.

C.B.

Colonel Gerald Trevor Bruce, C.M.G., D.S.O., T.D., D.L., Chairman, Territorial Army Association of the County of Glamorgan. Admitted a solicitor, 1893.

Lieutenant-Colonel John Dallas Waters, D.S.O., J.P., Secretary of Commissions of the Peace, Lord Chancellor's Department. Called to the Bar by the Inner Temple, 1919.

ORDER OF THE INDIAN EMPIRE.

C.I.E.

Machraj Bhawani Shanker Niyogi, Judge of the High Court of Judicature at Nagpur, Central Provinces.

ROYAL VICTORIAN ORDER.

G.C.V.O.

Sir Bernard Edward Halsey Bircham, K.C.V.O. Admitted a solicitor, 1891.

K.C.V.O.

Colonel Frank Dormay Watney, C.B.E., T.D. Admitted a solicitor, 1893.

ORDER OF THE BRITISH EMPIRE.

C.B.E.

Martin Charles Boniwell, Esq., LL.B., Assistant Secretary and Assistant Parliamentary Draughtsman, Attorney-General's Department, Commonwealth of Australia.

O.B.E.

Khan Bahadur Hormasji Pestonji Chahewala, Assistant Government Pleader, Ahmedabad, Bombay.

William de Prélaz Crousaz, Esq., Jurat of the Royal Court and Lieutenant Bailiff of Guernsey.

Claud Walker Heneage, Esq., lately Registrar, H.M. Land Registry. Called to the Bar by the Inner Temple, 1902.

Ivor Powell, Esq., Principal, Ministry of Pensions. Called to the Bar by Gray's Inn, 1922.

George Francis Stringer, Esq., Clerk of the Metropolitan Water Board. Called to the Bar by the Middle Temple, 1910.

Lieutenant-Colonel and Brevet Colonel Innes Noel Ware, T.D., late Officer Commanding 54th (Durham and West Riding) Medium Brigade, Royal Artillery, Territorial Army. Admitted a solicitor, 1921.

HONORARY O.B.E.

Tewfik Bey Sinnu, President of the Court of Appeal, Transjordan.

M.B.E.

Ahmed Alhadi, Esq., Master and Registrar, Supreme Court, Sierra Leone.

Ratan Mohan Chatterjee, Esq., Solicitor and Notary Public, Partner of the firm of Messrs. R. M. Chatterjee and Co., Calcutta, Bengal.

Rao Bahadur Parshuram Gopal Masurekar, Barrister-at-Law, Legal Practitioner, States of Western India.

Ravi Varma Tampuran, retired Sub-Judge, Madras Provincial Civil Service.

Lieutenant David Arnot Williamson, T.D., Tyne Electrical Engineers, Royal Engineers, Territorial Army. Admitted a solicitor, 1914.

IMPERIAL SERVICE ORDER.

I.S.O.

Pedro St. Matthew Daniel, Esq., lately Senior Registrar, Judicial Department, Nigeria.

COMPANION.

Percy John Howard, Esq., Principal Clerk, Principal Probate Registry.

Honours and Appointments.

The King has been pleased, on the recommendation of the Secretary of State for Scotland, to approve the appointment of Mr. ALBERT RUSSELL, K.C., Solicitor-General for Scotland, to be one of the Senators of His Majesty's College of Justice in Scotland in place of the late Lord Murray. Mr. Russell was called to the Scottish Bar in 1908, and took silk in 1931. He was appointed Solicitor-General for Scotland in December last.

The King has been pleased, on the recommendation of the Secretary of State for Scotland, to approve the appointment of Mr. JAMES STEVENSON, K.C., to be one of the Senators of His Majesty's College of Justice in Scotland in place of the late Lord Anderson. Mr. Stevenson, who was educated at Kelvinside Academy and Glasgow University, was called to the Scottish Bar in 1908 and took silk in 1931. He represented the Camlachie Division of Glasgow in Parliament from 1931 to 1935.

The Board of Trade have appointed, with effect from the 15th June, 1936, Mr. TUDOR CALEDFRYN CADWGAN, Assistant Official Receiver in the Bankruptcy (High Court) Department, to be Official Receiver for the Bankruptcy districts of the county courts holden at Swansea, Aberdare and Mountain Ash, Bridgend, Merthyr Tydfil, Neath and Port Talbot, in the place of Mr. W. F. Cresswell.

The Minister of Health has approved the appointment of Mr. C. W. O. GIBSON as Deputy Chief Inspector of Audits in succession to Mr. N. M. Griffiths, O.B.E., who is retiring from the public service on reaching the age limit.

Mr. WILSON H. SMITH, of Aberdeen, has been appointed by Aberdeen magistrates to the post of Burgh Procurator-Fiscal.

Professional Announcements.

(2s. per line.)

SOLICITORS & GENERAL MORTGAGE & ESTATE AGENTS ASSOCIATION.—A link between Borrowers and Lenders, Vendors and Purchasers.—Apply, The Secretary, Reg. Office: 12, Craven Park, London, N.W.10.

Notes.

The next Quarter Sessions of the Peace for the Borough of Wolverhampton will be held at the Sessions Court, Town Hall, North-street, Wolverhampton, on Friday, the 10th day of July, 1936, at 10 o'clock in the forenoon.

Mr. Brian William Dudley Paul, graduated B.A. from King's College, Cambridge, articled to his father, Mr. Dudley Moore Paul, of 3, New-court, Lincoln's Inn, W.C.2, has now taken his LL.B. at Cambridge and obtained a First Class.

A Blackstone Prize of £105 has been awarded by the Masters of the Bench of the Middle Temple to Mr. Alexander Edward Hunter, of The Queen's College, Oxford, for Criminal Law. Twelve such prizes are awarded each year to students of the Middle Temple.

Mr. Rhys Hopkin Morris has tendered his resignation as a Metropolitan magistrate as he has been offered by the B.B.C. the full-time post of regional director for Wales. Mr. Morris, who is forty-eight years of age, was appointed in August, 1932. He sits at the North London Police Court.

The text of the Convention between the United Kingdom and Lithuania respecting legal proceedings in civil and commercial matters, ratifications of which were exchanged in London on 7th May, 1936, has been issued by H.M. Stationery Office as a White Paper. [Cmd. 5197. Price 4d.]

The Societies of Lincoln's Inn, the Middle Temple, the Inner Temple, and Gray's Inn have issued the Consolidated Regulations for 1936 as to the admission of students, the mode of keeping terms, the education and examination of students, the calling of students to the Bar, and the taking out of Certificates to practise under the Bar.

A course of lectures on Industrial Law under the auspices of the Industrial Welfare Society (Incorporated) will be given weekly by Mr. H. Samuels, M.A., Barrister-at-Law, on Wednesdays, at 6.30 p.m., commencing on 14th October, 1936, at the headquarters of the Society, 14, Hobart-place, S.W.1. Each lecture lasts one hour and there is a further half-hour for questions and discussion. The course is intended for all persons engaged in administrative work in industry and commerce, as well as for persons intending to take up such posts. The object is to give those taking the course a knowledge of those branches of the law which they will need in their work, treated as far as possible from a practical rather than an academic standpoint.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT I.	GROUP I. MR. JUSTICE EVE. Non-Witness.	MR. JUSTICE BENNETT. Witness Part I.
	Mr.	Mr.	Mr.	Mr.
June 29	Andrews	Blaker	Ritchie	*More
,, 30	Jones	More	Andrews	*Ritchie
July 1	Ritchie	Hicks Beach	More	*Andrews
,, 2	Blaker	Andrews	Ritchie	*More
,, 3	More	Jones	Andrews	Ritchie
,, 4	Hicks Beach	Ritchie	More	Andrews
	GROUP I. MR. JUSTICE CROSSMAN. Witness Part II.	MR. JUSTICE CLAUSON. Witness Part II.	GROUP II. MR. JUSTICE LUXMOORE. Witness Part I.	MR. JUSTICE FARWELL. Non-Witness.
	Mr.	Mr.	Mr.	Mr.
June 29	*Andrews	Blaker	*Jones	Hicks Beach
,, 30	More	*Jones	*Hicks Beach	Blaker
July 1	*Ritchie	Hicks Beach	*Blaker	Jones
,, 2	Andrews	*Blaker	Jones	Hicks Beach
,, 3	*More	Jones	*Hicks Beach	Blaker
,, 4	Ritchie	Hicks Beach	Blaker	Jones

*The Registrar will be in Chambers on these days, and also on the days when the Court is not sitting.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 9th July, 1936.

	Div. Months.	Middle Price 24 June 1936.	Flat Interest Yield.	‡Approximate Yield with redemption
			£ s. d.	£ s. d.
ENGLISH GOVERNMENT SECURITIES				
Consols 4% 1957 or after	FA	116	3 9 0	2 19 3
Consols 2½%	JAJO	85½	2 18 6	—
War Loan 3½% 1952 or after	JD	106	3 6 0	3 0 5
Funding 4% Loan 1960-90	MN	117	3 8 5	2 19 11
Funding 3% Loan 1959-69	AO	103⅛	2 18 0	2 15 10
Funding 2½% Loan 1956-61	AO	93½	2 13 6	2 17 5
Victory 4% Loan Av. life 23 years	MS	115½	3 9 3	3 1 1
Conversion 5% Loan 1944-64	MN	118	4 4 9	2 6 10
Conversion 4½% Loan 1940-44	JJ	108¾	4 2 9	2 12 2
Conversion 3½% Loan 1961 or after	AO	107½	3 5 1	3 1 4
Conversion 3% Loan 1948-53	MS	104½	2 17 5	2 11 2
Conversion 2½% Loan 1944-49	AO	101½	2 9 3	2 5 9
Local Loans 3% Stock 1912 or after	JAJO	97	3 1 10	—
Bank Stock	AO	374	3 4 2	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	86	3 3 11	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	95	3 3 2	—
India 4½% 1950-55	MN	115	3 18 3	3 3 1
India 3½% 1931 or after	JAJO	97½	3 11 10	—
India 3% 1948 or after	JAJO	85½	3 10 2	—
Sudan 4½% 1939-73 Av. life 27 years	FA	119	3 15 8	3 8 3
Sudan 4% 1974 Red. in part after 1950	MN	116	3 9 0	2 12 4
Tanganyika 4% Guaranteed 1951-71	FA	115	3 9 7	2 15 4
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	109	4 2 7	2 14 0
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	109	3 13 5	3 7 0
*Australia (C'mm'nw'th) 3¾% 1948-53	JD	102	3 13 6	3 10 10
Canada 4% 1953-58	MS	110½	3 12 5	3 3 9
*Natal 3% 1929-49	JJ	101	2 19 5	—
*New South Wales 3½% 1930-50	JJ	100	3 10 0	3 10 0
*New Zealand 3% 1945	AO	101	2 19 5	2 17 6
Nigeria 4% 1963	AO	113	3 10 10	3 5 5
*Queensland 3½% 1950-70	JJ	101	3 9 4	3 8 2
South Africa 3½% 1953-73	JD	107	3 5 5	2 19 5
*Victoria 3½% 1929-49	AO	100	3 10 0	3 10 0
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	97	3 1 10	—
*Croydon 3% 1940-60	AO	100	3 0 0	3 0 0
Essex County 3½% 1952-72	JD	106½	3 5 9	3 0 2
Leeds 3% 1927 or after	JJ	95	3 3 2	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	106	3 6 0	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	80	3 2 6	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	95	3 3 2	—
Manchester 3% 1941 or after	FA	97	3 1 10	—
*Metropolitan Consd. 2½% 1920-49	MJSD	100	2 10 0	2 10 0
Metropolitan Water Board 3% "A" 1963-2003	AO	95	3 3 2	3 3 8
Do. do. 3% "B" 1934-2003	MS	97	3 1 10	3 2 1
Do. do. 3% "E" 1953-73	JJ	100	3 0 0	3 0 0
Middlesex County Council 4% 1952-72	MN	114	3 10 2	2 17 10
† Do. do. 4½% 1950-70	MN	115	3 18 3	3 3 1
Nottingham 3% Irredeemable	MN	96	3 2 6	—
Sheffield Corp. 3½% 1968	JJ	106½	3 5 9	3 3 5
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	112xd	3 11 5	—
Gt. Western Rly. 4½% Debenture	JJ	123½xd	3 12 10	—
Gt. Western Rly. 5% Debenture	JJ	136½xd	3 13 3	—
Gt. Western Rly. 5% Rent Charge	FA	131½xd	3 16 1	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	130½	3 16 8	—
Gt. Western Rly. 5% Preference	MA	118	4 4 9	—
Southern Rly. 4% Debenture	JJ	110¼	3 12 5	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	112	3 11 5	3 6 1
Southern Rly. 5% Guaranteed	MA	130½	3 16 8	—
Southern Rly. 5% Preference	MA	120	4 3 4	—

*Not available to Trustees over par. †Not available to Trustees over 115.
‡In the case of Stocks at a premium, the yield with redemption has been calculated as at the earliest date; in the case of other Stocks, as at the latest date.

IMPORTANT SALE BY AUCTION, 30th JUNE, 1936.

FREEHOLD MAIN RD. PROPERTY, 177-195 (odd), NORTHOLT-RD., S. HARROW, MDDX. 10 houses with vacant possession of 5.

VACANT FREEHOLD SHOP SITE, adjoining site reserved for S. London Co-op. Socy., in CROYDON-RD., HAYES, KENT.

15 ACRES of FREEHOLD LAND, "SCALLOWS MEADOW," THREE BRIDGES, SUSSEX, with main road frontage, and close to Gatwick Air Port.
ALL RIPE FOR IMMEDIATE DEVELOPMENT.

Adjoining United Dairies Ltd.

Handsome Block of 4 SHOPS with Flats over, 275-281, HIGH-ST., SUTTON, SURREY. All let on full repairing lses. Gross £673 15s. p.a., rising to £748 15s. p.a. Lse. 97 yrs.

FHLD. BLOCK of 3 SHOPS with Flats over, 244-248, FORE-ST., EDMONTON, N.18. All let, ex. 1 l.u. shop. Capable of together producing £475 p.a.

Magnificent BLOCK of 6 SHOPS and FLATS, 2-7, CENTRAL-RD., WEST MOLESEY, SURREY. Just ready for letting and estimated to produce £750 p.a. (clear).

4 Doors of F. W. Woolworth & Co. Ltd.

An important BLOCK of 5 SHOPS and FLATS, 1-5, BURWOOD-PARADE, GUILDFORD-ST., CHERTSEY, SURREY. Just ready for letting and estimated to produce £730 p.a. (clear).

The LEASEHOLD SHOP PROPERTY INVESTMENT, 80, GEORGE-ST., PORTMAN-SQ., W.1. Capable of producing over £500 p.a. Direct Portman Lse. Low G.R.

The LEASEHOLD RESIDENCE, 57, CHATSWORTH-RD., CRICKLEWOOD, N.W.2. 6 bed, bathroom, 2 rec., 2 boxrms., etc. Garage. Good Garden. Lse. about 67 yrs. G.R. £12 p.a.
With Vacant Possession.

For Sale Privately or to be offered at WINCHESTER HOUSE, 100, OLD BROAD ST., E.C.2, on TUESDAY, 30th JUNE, 1936, at 2.30 p.m., by

S. &. S. FREEMAN LTD.,

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Telegrams: "Chinnocks, London." **80, CHEAPSIDE, E.C.2.** Telephone: City 3676 (Private Exchange).

AUCTION SALE at the MART, E.C.4, on TUESDAY, JUNE 30th, at 2.30 p.m.

By Direction of the Liquidator, H. Watson Humphries, Esq., F.C.A.

CITY OF LONDON AND FINSBURY.

LEASEHOLD INVESTMENTS.

In EIGHT LOTS and comprising a

BLOCK OF OFFICES, FACTORY, WAREHOUSE AND OTHER BUSINESS PREMISES

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Nos. 61, 62 and 63, BARBICAN, ALDERSGATE.
Nos. 2 to 7, NEW ZEALAND AVE., ALDERSGATE.
No. 16, BRIDGEWATER SQ., ALDERSGATE.
Nos. 50 and 52, FANN STREET, ALDERSGATE.
No. 34, NOBLE STREET, GRESHAM STREET.
No. 2A, WINDSOR COURT, MONKWELL STREET.
Nos. 2 and 3, HIND COURT, FLEET STREET.
Nos. 18 and 19, QUEENHITHE, UPPER THAMES ST.
No. 8, BAYER ST., GOLDEN LANE, FINSBURY.

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Liquidator: H. WATSON HUMPHRIES, Esq., F.C.A., Messrs. Hobbs, Ravenscroft and Humphries, 23, King-street, E.C.2.
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CITY OF LONDON.

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FREEHOLD BUSINESS PREMISES

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Very suitable for housing a professional firm requiring a compact building for their own occupation.

FLOOR SPACE ABOUT 2,165 SQUARE FEET.
WITH VACANT POSSESSION.

Messrs.

ST. QUINTIN, SON & STANLEY

are instructed to sell the above by AUCTION at the LONDON AUCTION MART, 155, Queen Victoria-street, E.C.4, on WEDNESDAY, 8th JULY, 1936, at 2.30 p.m.

Particulars, plan and conditions of sale from Frank S. Price, Esq., 3, Frederick's-place, Old Jewry, E.C.2, and the Solicitors, Messrs. Martyns & Gane, 2, Temple-gardens, E.C.4, or from the Auctioneers, 34, Clement's-lane, Lombard-street, E.C.4.

By Order of the Executrix.

FINSBURY.—Nos. 39-45 (odd), CENTRAL-STREET, OLD-STREET, E.C.1 (Close Golden-lane.)—FREEHOLD CORNER BLOCK, suitable for erection of factory, &c. Site about 3,300 ft. super. Frontage 63 ft. VACANT POSSESSION on COMPLETION.

Messrs. DENNEY & CO.

will SELL by AUCTION, at the MART, 155, Queen-Victoria-street, E.C.4, on THURSDAY, 2nd July, 1936, at 2.30 o'clock (unless sold privately beforehand).—Particulars of the Auctioneers' Offices, 91, Moorgate, E.C.2. Met. 9032.

AUCTION.—30TH JUNE, 1936.

BAYSWATER GROUND RENTS.

Instructions have been received to withdraw the above, as previously advertised, from auction.

RICHARD ELLIS & SON,

37 AND 38, FENCHURCH-STREET, E.C.3.

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Offices: 6, Poultry, London, E.C.2. Telegrams: "Invariably, Stock, London." Tel. No. City 1451 (3 lines).

PERIODICAL PROPERTY AUCTIONS.

H. E. FOSTER & CRANFIELD

beg to announce that their PROPERTY AUCTIONS will be held at THE LONDON AUCTION MART, 155, Queen Victoria-street, E.C.4.

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In a delightful position 700 ft. above sea level with extensive views to the South. 7 miles from Newbury and 9 miles from Andover.

THE FREEHOLD RESIDENTIAL AGRICULTURAL & SPORTING ESTATE

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THE ELLIS-FERMOR ESTATE

About 590 Acres.

MEDIUM SIZED RESIDENCE, 5 FARMS AND SMALLHOLDINGS, 2 SMALL HOUSES, VILLAGE POST OFFICE, 14 COTTAGES, NUMEROUS BUILDING SITES AND ACCOMMODATION LAND,

VARIOUS BUILDINGS, MOST SUITABLE FOR CONVERSION.

Main Electric Light. Main Water. Good Sporting Facilities in the District.

FOR SALE AS A WHOLE OR IN NUMEROUS LOTS by Auction **JULY 31st NEXT.**

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Plan and full details from the Solicitors, Messrs. MINCHIN, GARRETT & WORLEY, 4, Stone Buildings, Lincoln's Inn, W.C.2, or of the Joint Auctioneers, Messrs.

F. ELLEN & SON,

Andover, Hants, and Messrs.

RALPH PAY & TAYLOR,

3, Mount-street, Grosvenor Square, W.1.

By order of Executors.

OXFORD STREET, W.

FREEHOLD BUSINESS PREMISES, No. 7, POLAND-STREET, comprising ground floor, basement and three upper floors. Let upon repairing lease for 21 years from 29th September, 1924, being renewal of a previous lease at £250 per annum.

Solicitors: Messrs. Morrell, Peel & Gamlen, 1, St. Giles, Oxford.

CITY OF WINCHESTER.

VALUABLE FREEHOLD PROPERTY, No. 39, HIGH-STREET AND No. 26, THE SQUARE, comprising extensive shop with rooms to upper and a House and Shop in rear. The whole let to Montague Burton Limited upon repairing lease for 42 years from 1921 at £450 per annum.

Solicitors: Messrs. Joynson-Hicks & Co., Lennox House, Norfolk-street, Strand, W.C.2.

Particulars of the respective Solicitors and of the Auctioneers,

STIMSON & SONS,

25, Ironmonger-lane, Cheapside, E.C.2, and 12, New Kent-road, Elephant & Castle, S.E.1.

At a very low reserve to ensure a sale.

NORHYRST, WOLDINGHAM.

Beautiful situation over 650ft. up with extensive views, absolutely immune from traffic, yet handy for shops and station, with excellent service to the City or West End in 30 mins.

ATTRACTIVE FREEHOLD COUNTRY RESIDENCE.

Panelled hall, 3 reception, 6 bed rooms, dressing room, bath room, good offices.

COMPANY'S SERVICES. MODERN DRAINAGE. DOUBLE GARAGE.

Inexpensive and matured garden of about ½ acre.

To be SOLD by AUCTION at the MART, 155, Queen Victoria-street, E.C.4, on WEDNESDAY, 22nd JULY, 1936, at 2.30 p.m. (unless previously sold privately).

Particulars of the Solicitors, Messrs. Linklaters & Paines, 2, Bond-court, Walbrook, E.C.4; or of the Joint Auctioneers,

BATCHELAR & SON,

Caterham and Warlingham (Caterham 7), and

GEORGE TROLLOPE & SONS,

25, Mount-street, W.1 (Grosvenor 1553).

By order of the Executrix of J. Olver, Esq., deceased. Valuable freehold property,

Nos. 5 and 6 PANTON-STREET, HAYMARKET, S.W.1.

Adjoining the Comedy Theatre; 31 ft. frontage; site area 2,000 ft. Gross income £1,651 14s. per annum.

Messrs. PROTHEROE & MORRIS

are instructed to offer this property by AUCTION at the London Auction Mart, Queen Victoria-Street, E.C.4, on TUESDAY, JUNE 30th, at 2.30.

Particulars of the Solicitors, Messrs. Arthur Taylor and Co., Maxwell House, 11, Arundel-street, Strand, or the Auctioneers, 67 and 68, Cheapside, London, E.C.2.

HARRODS ESTATE OFFICES

62-64, BROMPTON ROAD, S.W.1.

Telephones: SLOANE 1234 and KENSINGTON 1490.

At a Low Reserve.

INVERNEUK,

CHIPSTEAD, SURREY.

Fine position 500 feet above sea level. Chipstead Station 10 minutes' walk. Close to the Golf Course and adjoining Chipstead Hard Court Tennis Club.

The Most Desirable

FREEHOLD MODERN RESIDENCE

containing

Hall, three reception rooms, four good bed rooms, tiled bath room, compact offices, Co.'s electric light, gas and water. Modern drainage. Wired for telephone, Capital Garage with Loft over. Outbuildings.

DELIGHTFUL SECLUDED GARDEN with Full-sized Tennis Lawn, in all about HALF AN ACRE.

VACANT POSSESSION ON COMPLETION.

HARRODS

Have received instructions to offer the above by AUCTION (unless previously sold privately) at HARRODS' ESTATE SALE ROOMS, S.W.1, on TUESDAY, 7th JULY, 1936, at 2.30 p.m.

Illustrated Auction Particulars with Conditions of Sale and Orders to View may be obtained of the Solicitors: Messrs. KINMONT & MAXWELL, W.S., 11, Coates-crescent, Edinburgh, and from the Auctioneers, HARRODS LIMITED, 62-64, BROMPTON-ROAD, S.W.1. Surrey Office: WEST BYFLEET.

At a Market Reserve.

THE KNOLL,

WOLDINGHAM.

Beautiful situation 600 feet up, commanding unspoilt views. Woldingham Station 10 minutes' walk. Convenient for Golf.

The Very Attractive

FREEHOLD PRE-WAR RESIDENCE

containing

Lounge hall with cloak room, two large reception rooms, eight bed rooms, bath room and usual offices. Co.'s electric light and power, gas and water. Modern drainage. Wired for telephone. Excellent Garage with Room over. Outbuildings.

INEXPENSIVE PLEASURE GARDEN with Tennis Lawn, in all nearly THREE-QUARTERS OF AN ACRE.

VACANT POSSESSION ON COMPLETION.

HARRODS

Have received instructions to offer the above Property by AUCTION (unless previously sold privately) at HARRODS' ESTATE SALE ROOMS, S.W.1, on TUESDAY, 7th JULY, 1936, at 2.30 p.m.

Illustrated Auction Particulars with Conditions of Sale and Orders to View may be obtained of the Solicitors: Messrs. LAYTONS, 29, Budge-row, Cannon-street, E.C.4, and of the Auctioneers, HARRODS, LIMITED, 62-64, BROMPTON-ROAD, S.W.1. Surrey Office: WEST BYFLEET.

At a Low Reserve.

ST. AUSTINS,

FRENSHAM,

NEAR FARNHAM, SURREY.

Fine position, commanding uninterrupted views. Farnham Station 3½ miles. Convenient for Golf Courses.

The Picturesque

FREEHOLD COUNTRY RESIDENCE

containing

Entrance and inner halls, three reception rooms, six principal bed rooms, servants' rooms, bath room, usual offices. Co.'s electric light and water. Modern drainage. Garage for 2 Cars. Stabling. Outbuildings. BEAUTIFUL OLD-WORLD GROUNDS. Small Orchard, etc., in all about 2¼ ACRES.

VACANT POSSESSION ON COMPLETION.

HARRODS

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Illustrated Auction Particulars with Conditions of Sale and Order to View may be obtained of the Solicitors: Messrs. WALTER BURGIS & Co., 4 & 5, Bond-court, Walbrook, E.C.4, and the Auctioneers, HARRODS, LIMITED, 62-64, BROMPTON-ROAD, S.W.1. Surrey Office: WEST BYFLEET.

At a Moderate Reserve.

STAPLANDS,

OATLANDS CHASE, WEYBRIDGE.

Splendid position. One mile from Walton-on-Thames Station. Easy motor run of Town. Good Golf at St. George's Hill and Burhill.

The Exceptionally Desirable

FREEHOLD RESIDENCE

containing

Vestibule, fine lounge hall, three reception rooms, ten bed rooms, two bath rooms and bath dressing room, complete offices. Co.'s electric light, gas and water. Main drainage. Central heating. Oak floors and doors. Two Garages. Outbuildings. Heated Greenhouse. BEAUTIFUL MATURED GARDENS with Hard Tennis Court, in all over ONE ACRE.

VACANT POSSESSION ON COMPLETION.

HARRODS

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Illustrated Auction Particulars with Conditions of Sale and Orders to View may be obtained of the Solicitors: Messrs. FIRTH & Co., First Avenue House, 52, Bedford-row, W.C.1, and from the Auctioneers, HARRODS, LIMITED, 62-64, BROMPTON-ROAD, S.W.1 Surrey Office: WEST BYFLEET.

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LONDON AND MANCHESTER.

SHOP PROPERTY INVESTMENT

FOR SALE BY PRIVATE TREATY.

WEST END.

In a busy Soho Market. Corner SHOP PREMISES with modern front let on full repairing lease 18 years unexpired without break at £550 p.a. Price Freehold £8,600.

CATFORD (Rushey Green).

FREEHOLD SHOP PROPERTY in an old-established position. Let on long full repairing lease without break to tenants with other branches. Income £340 p.a. For sale to yield 6 per cent.

WEST COUNTRY.

Well secured 5 per cent. investment in a large City. Fine FREEHOLD PREMISES equipped at large cost. Let to a large multiple company on long full repairing lease at a rental of £1,500 p.a.

HACKNEY (Mare Street).

Well placed FREEHOLD SHOP and upper part amongst multiple firms. Let to a well-known company with over 100 branches on 21 years' lease at £300 p.a. Price £5,750.

YORKSHIRE TOWN.

Population 16,000. Adjoining Messrs. F. W. Woolworth & Co's Store. SHOP and upper part let to old-established trader on 21 years' full repairing lease without break at £150 p.a. Freehold for sale to yield nearly 6 per cent.

SOUTH WALES.

Excellent position in large town. SHOP PREMISES, let to a multiple company on 21 years' full repairing lease without break at a rental of £500 p.a. For Sale, Freehold to yield 5½ per cent.

27, MADDOX STREET, LONDON, W.1.

And at 53, KING STREET, MANCHESTER, 1.

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